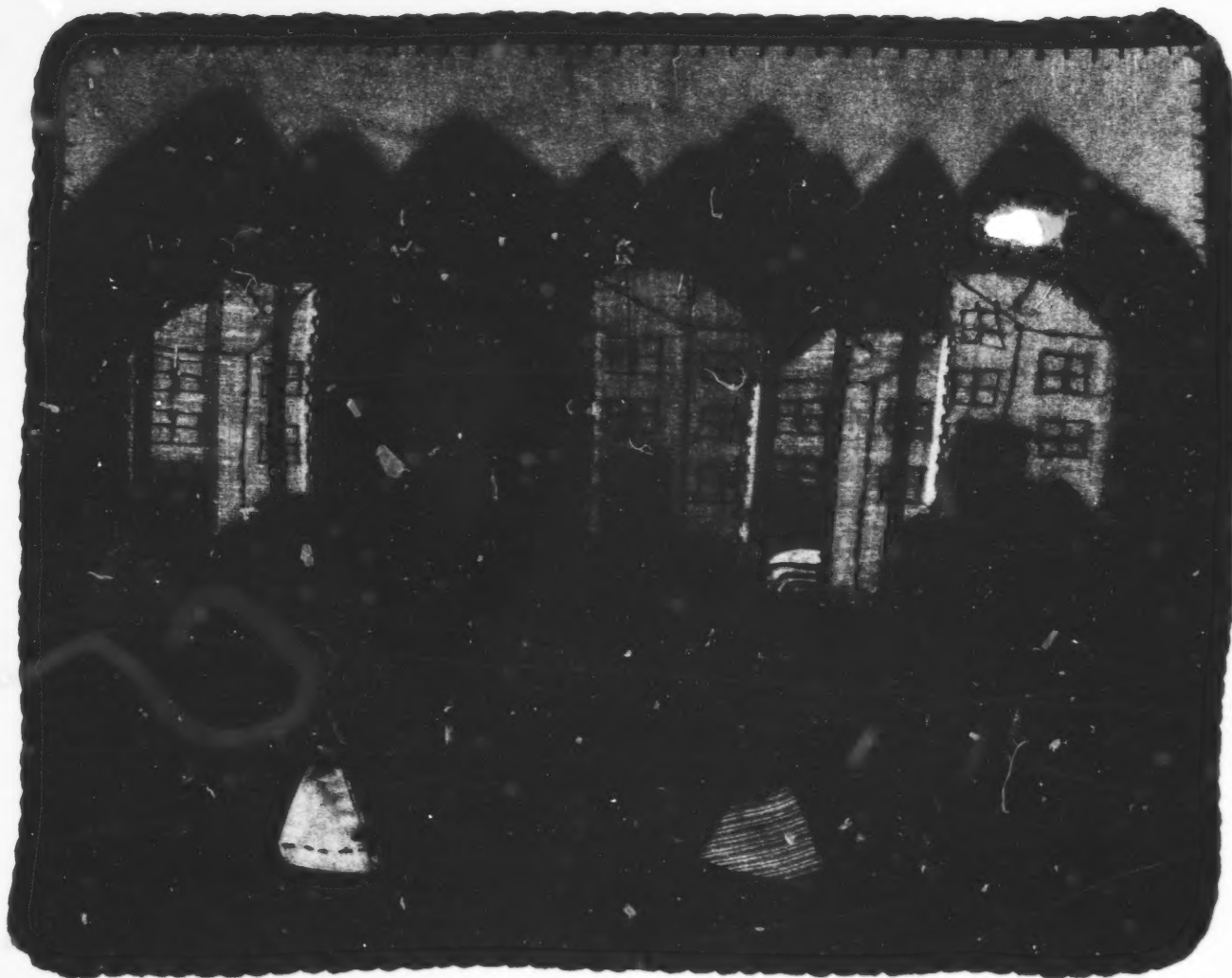


1987 Annual Report



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA



THE MANITOBA
HUMAN RIGHTS
COMMISSION

89-00103/

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA



THE MANITOBA
HUMAN RIGHTS
COMMISSION

1987 Annual Report

The Manitoba Human Rights Commission
1007 - 330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4
(204) 945-3007

NEW ADDRESS JULY 1988

301 - 259 Portage Avenue
Winnipeg, Manitoba
R3B 2A9

or

Room 115, P.O. Box 2550
Provincial Government Building
The Pas, Manitoba
R9A 1M4
(204) 623-6411 (Ext. 270)

or

Provincial Government Building
340 - Ninth Street
Brandon, Manitoba
R7A 6C2
(204) 726-6261

Toll Free Numbers:
1-800-282-8069 (Winnipeg)
1-800-572-1040 (Brandon)

Telecommunications Device for
Hearing & Speech Impaired:
(204) 945-3442 (Winnipeg)

Cover: Our front cover features the arpillera presented to the winners of the first annual Human Rights Journalism Award, co-sponsored by The Manitoba Human Rights Commission and the Winnipeg Press Club, Ltd. (see page 14).

The arpillera is a tapestry developed by women of the shanty town communities of Chile. The women, most of whom lack formal education, desperately sought ways to earn money to feed their families. They came together to form income-generating cooperatives which create the arpilleras. These unique artworks have also developed into a means of expressing themselves and describing the political and social reality of Chile.

The arpillera reproduced on the cover was commissioned especially for the Award. It depicts a demonstration for freedom and peace, organized by women in a shanty town community, with other women coming from their homes to join the procession. The lit candles in their hands are symbolic of their connection with international human rights.

Manitoba



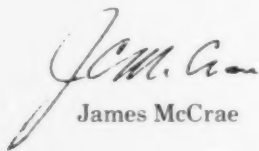
Attorney General

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour,
George Johnson,
Lieutenant-Governor for the Province
of Manitoba

Sir:

May it please your honour, it is my pleasure to present to your Honour the Annual Report of The Manitoba Human Rights Commission for the year 1987.


James McCrae

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA



THE MANITOBA
HUMAN RIGHTS
COMMISSION

The Honourable James McCrae
Attorney-General
Legislative Building
Winnipeg, Manitoba
R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of the Manitoba Human Rights Code, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 1987.

Marek Debicki
Vice-Chairperson

Table of Contents

	Page
Commissioners	4
Staff	5
The Function of the Commission	6
Enforcement of The Human Rights Code	6
Public Programs/Education	7
National and International Liaison	8
Personnel	10
An Overview of 1987 Activities	11
Appendix A — Adjudication and Other Legal Proceedings	17
Appendix B — Sample Cases	22
Appendix C — Statistics	29
Appendix D — Biographies of Commissioners	41
Appendix E — Publications and Audio-Visual Aids	43
Appendix F — The Complaint Form	45

The Commissioners



Chairperson:
Claudia Wright

Commissioners: (As at December 31, 1987)

	Term Expires
Claudia Wright Chairperson	1988
Marek Debicki Vice-Chairperson	1988
Raj Mehta Commissioner	1988
Helen Warner Commissioner	1988
Wayne Courchene Commissioner	1988
Francesco Grande Commissioner	1989
Kue Young Commissioner	1989
Marion Robinsong Commissioner	1989
Marianne Bossen Commissioner	1989
Lorraine Sigurdson Commissioner	1990
Brigitte Graba Commissioner	1990
Socorro Juan Commissioner	1990

(one vacancy as at December 31, 1987) 1990

(For Biographies of Commissioners, see Appendix D)

Minister:

The Honourable Vic Schroeder
Attorney General

The Staff (As at December 31, 1987)



Executive Director:
Darlene Germscheid

Administrative Support Services

Administrative Officer:
Linda Kopys

Administrative Secretaries:
Frieda Brandt
Donna Harland
Lora Kirby
Donna May
Jeannette Roque
Maureen Sorokowski

The Pas Office

Regional Supervisor:
Ronald Chief

Regional Intake Officer:
Elizabeth Bennett

Public Programs

Education Officers:
Judith Burch
Victor Schwartzman
Stan Wood

Intake Counsellors:
Katherine Fraser-Hominick
Derek Legge

Legal Counsel:
Aaron Berg
Civil Litigation Branch
Dept. of Attorney-General

Enforcement

Chief Enforcement Officer:
Mariann Burka

Team Supervisors:
Buelah Blake
Sharon Wickman

Enforcements Officers:
Debra Beauchamp
Patrick Daly
Barbara Delorme
Nancy Flintoft Meronek
Kenneth Swain
Roger Young

Brandon Office

Regional Supervisor:
Peggy Pchajek

Regional Secretary:
Isobel Michie

The Function of the Manitoba Human Rights Commission

The Universal Declaration of Human Rights declares that: "All human beings are born free and equal in dignity and rights." In Manitoba, this ideal has been translated into law by *The Human Rights Code*, a provincial statute which prohibits discrimination on the basis of ancestry, nationality, religion, sex, age, disability, or other group stereotypes.

The Manitoba Human Rights Commission is the agency chiefly responsible for carrying out the provisions of *The Human Rights Code*. The Commission is authorized by *The Code* to accept and investigate complaints of discrimination and to attempt to settle substantiated complaints, to carry out educational activities, and to issue binding advisory opinions. Through these activities, the Commission attempts to reduce discrimination and promote social change leading to equal opportunity for all.

All services provided by the Commission are available to the public without charge.

Enforcement of The Human Rights Code

The Human Rights Code prohibits unreasonable discrimination which is based on group characteristics such as ancestry, nationality, ethnic origin, religion, age, sex, pregnancy and other gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief, and physical or mental disability.

The jurisdiction of the Human Rights Commission is restricted to matters within the constitutional authority of the provincial legislature. Most activities carried on in the province fall within provincial jurisdiction. However complaints against certain federally regulated enterprises, such as airlines, railways and the federal civil service, should be filed with the Canadian Human Rights Commission (telephone 983-2189). The staff of either Commission will answer any questions regarding the appropriate jurisdiction to deal with a particular complaint.

The enforcement program of the Commission includes those activities related to the acceptance and disposition of Complaints of Discrimination, and activities related to advisory opinions.

Complaints of Discrimination

Any person who believes that someone has contravened a provision of *The Human Rights Code* is invited to contact one of the Commission's Intake Counsellors and discuss his or her concerns. All calls are confidential and the Commission will not act without the caller's consent. If the issue falls within the jurisdiction and scope of *The Code*, the details of the allegation are recorded and the Counsellor arranges an appointment to meet with the complainant to obtain a signed Complaint of Discrimination. A copy of this form is included as Appendix F.

After the complaint is filed, the signed complaint form is served (generally by mail) on the party who has been accused of the discriminatory behaviour (the respondent), and he or she is invited to provide a formal reply to the allegations.

As soon as possible, an officer is assigned to conduct a thorough investigation of the allegations and the response. At this stage, it is the officer's responsibility to determine the facts of the case and to ensure that the rights of both parties are fully protected. On conclusion of the investigation, the findings are assessed. If the allegation is not supported by the evidence, the complaint is dismissed. If it appears to be justified, attempts are made to resolve the matter through conciliation.

Conciliation is a process common to most Canadian human rights complaint procedures. This allows for complaints to be voluntarily resolved by the parties concerned without adjudication. All matters related to the conciliation stage are confidential and without prejudice.

Should a complaint not be resolved during the conciliation stage, it is referred to the board of Commissioners, who may determine that the matter should be decided by an impartial Adjudicator.

The Adjudicator is appointed by the Attorney-General to hold a formal public hearing. All parties to the complaint are invited to present their arguments. Witnesses may be called and are subject to cross-examination. The Commission has the carriage of the complaint and is represented by legal counsel. The respondent and the complainant may also be represented by legal counsel if they wish.

If the Adjudicator, after hearing all the evidence, rules that a contravention of *The Human Rights Code* has occurred, he or she has the authority to make an order requiring the respondent to comply with *The Code*; to provide the denied service, employment, or housing; to pay lost wages or out-of-pocket expenses incurred by the complainant; or to pay other damages as may be deemed appropriate by the

Adjudicator. If there has been evidence of an ongoing practice of discrimination, the Adjudicator may order the respondent to implement an affirmative action plan or other special program and may direct the Commission to assist in the supervision or implementation of the program.

If any party disagrees with an Adjudicator's decision, he or she may apply to the Court of Queen's Bench for a review of the order within the time limit set out in *The Code*. In some cases, the matter may be appealed to the Manitoba Court of Appeal and even to the Supreme Court of Canada.

With the consent of the Attorney-General, criminal proceedings may be launched in certain cases where criminal prosecution for violation of *The Code* appears appropriate. If a person is found guilty in these proceedings, he or she may be subject to a fine of not more than two thousand dollars for an individual or ten thousand dollars for a corporation.

A chart of the Usual Steps in Processing Complaints can be found at the end of this section.

Advisory Opinions:

To assist the person who feels obliged to consider certain group characteristics when making business decisions but who wishes to ensure that the distinction is not discriminatory, *The Human Rights Code* has provided for binding advisory opinions to be issued by the Manitoba Human Rights Commission. By requesting such an advisory opinion, the business or organization can avoid the negative consequences of a complaint of discrimination.

Any person who is responsible for the implementation of a practice or activity which is within the jurisdiction of *The Code* may apply for an advisory opinion. (An application form may be obtained from any of the offices of the Commission.) As soon as possible, the application will be assigned to an officer who will carry out further research as required. This may include interviews with the applicant or other persons knowledgeable about the issues involved. The results of this research will be discussed with the applicant who will be given the opportunity to revise or modify the proposed practice or activity to bring it into compliance with *The Code*. At the conclusion of this process, the Commission may issue a formal and binding advisory opinion. The opinion will include a full description of the practice or activity and will contain the reasons for the determination. If the advisory opinion states that a practice or activity is not contravening *The Human Rights Code*, no Complaint of Discrimination will be acted upon by the Commission as long as the opinion remains in effect.

In general, the advisory opinion will remain in effect for as long as the fact situation upon which it is based remains accurate. The Commission may, however, revoke or modify an advisory opinion for other reasons, such as precedent-setting rulings by a Board of Adjudication or the Courts. When an opinion is revoked or modified, it remains in effect until the Commission formally notifies the business or organization who requested the opinion.

If any person believes that an advisory opinion issued by the Commission is inappropriate, he or she may request that the opinion be revoked or modified. The Commission will consider such requests and take the appropriate action.

All advisory opinions issued by the Commission will be accessible to the public for inspection and will be reported in the annual report of the Commission.

Public Programs/Education

It has long been understood by human rights practitioners that discrimination cannot be overcome by relying totally on the resolution of individual complaints. While persons who have been subjected to illegal discrimination must certainly have access to the remedies to which they are entitled under the law, there are some discriminatory practices which are more effectively dealt with through other means.

For example, there are many instances of illegal discrimination which are not brought to the attention of the Commission. Sometimes the victim may not be aware of his or her rights to a remedy under the law or may choose not to complain for a variety of reasons. In addition, negative and hostile attitudes based on prejudice and stereotypes often arise in situations which are beyond the jurisdiction of human rights legislation. Children taunt each other in the playground with racial slurs; people are humiliated and embarrassed when confronted with bigotry and prejudice in social settings or in public places; and neighbourhoods are torn apart by racism and intolerance.

The Human Rights Code acknowledges that a combination of approaches is necessary to effectively combat discrimination and its immediate and historical effect, and mandates a variety of activities which are carried out by the Public Programs staff of the agency.

In addition to the requirement that the Commission accept and investigate formal complaints and issue advisory opinions, Section 4 of *The Code* states that the Commission is required to carry out programs which will forward the principle that every person is free and equal in dignity and rights, promote an understanding of and compliance with *The Code*, and ensure that the residents of Manitoba understand their civil and legal rights.

The Supreme Court of Canada has, on numerous occasions, noted the special nature of "discrimination" as a legislatively prohibited activity. It has stated that the legislation is intended to be "remedial" rather than "punitive" and emphasized that the primary function of the Human Rights Commission is to change public behaviour and attitudes. In this context, the importance of the educational and persuasive role of the Commission is clearly evident.

The Commission's education activities include a speaker service through which Commissioners and members of the staff are available to speak to groups about the rights and responsibilities described in *The Code* or any other topic related to human rights. Persons wishing to utilize the speaker service should contact the Human Rights Intake Counsellor.

The education program also includes outreach activities intended to maintain an ongoing liaison with various sectors of the community, and to assist and encourage community initiatives in activities designed to further the principles of human rights.

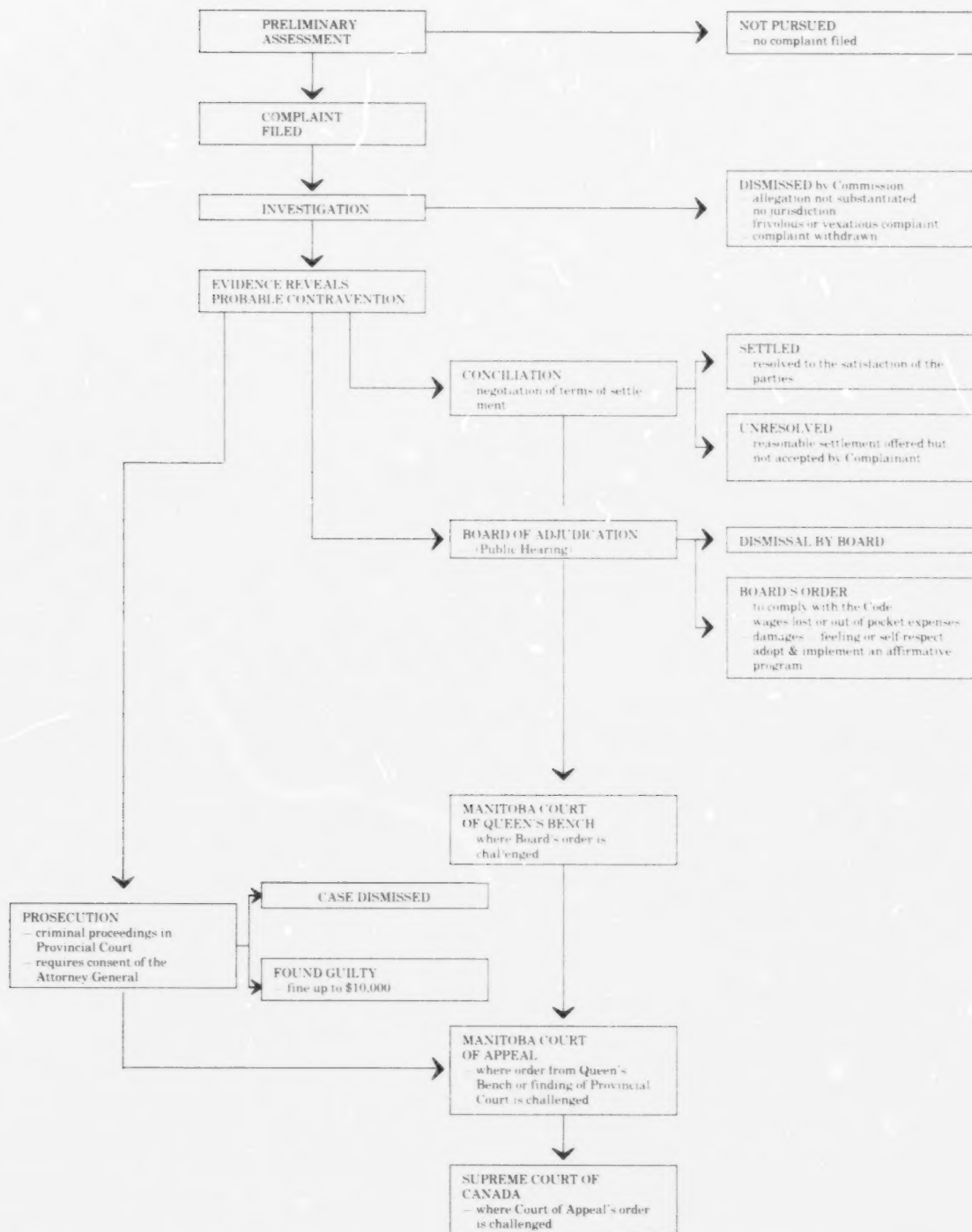
In addition, the Commission develops and conducts special education projects such as seminars, workshops, and contests. Various publications and audio-visual materials are produced by the Commission and loaned or distributed free of charge to the public. See Appendix E for a list of current materials.

National and International Liaison

The Manitoba Human Rights Commission is a member agency of three national and international organizations concerned with human rights. These are the Canadian Association of Statutory Human Rights Agencies (CASHRA), the International Association of Official Human Rights Agencies (IAOHRA), and the National Association of Human Rights Workers. Through membership in these organizations the Commissioners and staff are able to keep informed about recent developments in the field and participate in various staff development and training opportunities, in addition to contributing the knowledge gained from our own experiences and insights to the evolution of human rights theory and legislation.

Another important national liaison organization is the Continuing Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights. Although the Commission is not formally connected with the Committee, the Executive Director has been designated by the Attorney-General to provide assistance and backup to Manitoba's Official Representative. This Committee is responsible for monitoring Canada's compliance with the various international conventions relating to human rights to which Canada is a party. Through the Committee, new and emerging human rights issues are brought to the attention of Ministers Responsible for Human Rights from all Canadian jurisdictions at regular Ministerial Conferences.

Usual Steps in Processing Complaints



Personnel

The Manitoba Human Rights Commission consists of two components. One component is the board of Commissioners, chosen from the public at large by the Lieutenant Governor-In Council. The board meets on a monthly basis and is responsible for the policies and general direction of the Commission. The second component is the civil service staff, which carries out the day-to-day activities of the Commission.

The Responsibilities of the Board of Commissioners

Commissioners are selected from various geographic, cultural, social, and economic sectors of the province. They are appointed for three terms, and serve on a part-time basis. There are thirteen Commissioners, one of whom is the Chairperson and another the Vice-Chairperson.

The board of Commissioners establishes the policies which determine the manner in which the professional staff administer the programs and activities of the agency, and monitors and evaluates such programs. It is also the function of the board to determine the appropriate disposition of all complaints, and to issue binding advisory opinions.

One point that should be stressed is that neither the staff nor the board of Commissioners has the authority to order compensation or remedies for persons who feel they have suffered as a result of discrimination. If it appears that *The Code* has been violated and efforts to reach a mutually agreeable settlement have been unsuccessful, the only further action which may be taken by the Commission is to request the Attorney-General to appoint an impartial adjudicator to hear the matter and make an appropriate order. Where a criminal prosecution for violation of *The Human Rights Code* appears to be appropriate (not a common occurrence) the Commission may recommend that the Attorney-General commence a prosecution.

The Duties of the Staff

Human rights work is a demanding profession. Human rights professionals are constantly placed in sensitive situations, and they must bring to their work a wide variety of skills. They are required to be effective listeners and to have the ability to relate to persons from varied backgrounds, while maintaining neutrality and objectivity.

The Intake Counsellors respond to all inquiries from the public and will assist in the filing of formal complaints. They will accept requests for speaker services, provide information regarding other services of the Commission, and assist callers to reach appropriate alternate agencies if *The Human Rights Code* does not appear to be applicable.

The Human Rights Officers conduct the investigation and conciliation of complaints, the assessment of advisory opinion applications, and a variety of educational activities. Officers assigned to education will work with business, community groups, and other institutions and organizations in the delivery of human rights education programs. Other officers are responsible for the enforcement activities of the Commission. Coupled with investigative skills, these officers must also be able to negotiate settlements between often hostile parties without compromising the intent of *The Code*.

The quality and efficiency of the work carried out by the Commission is greatly enhanced by a small complement of competent and dedicated support staff who provide the necessary administrative support services.

In each of the Commission's regional offices, the Regional Supervisor investigates and conciliates complaints, conducts educational activities, and supervises the general administration of the office. In The Pas, the Intake Clerk responds to inquiries and accepts complaints, and provides clerical and secretarial support services. The Regional Supervisor in Brandon is assisted by a secretary.

The staff work under the direction of the Executive Director, who is responsible to both the board of Commissioners and the Department of the Attorney-General for the effective operation of the Commission.

An Overview of 1987 Activities

A New Human Rights Code

In 1987, the Government of Manitoba introduced new human rights legislation. Although the new statute does not depart from the general approach to human rights protection that has evolved across North America since World War II, it significantly improves both the protections and the administrative structure for dealing with complaints, bringing Manitoba's legislation to the forefront of human rights law in Canada.

The first Manitoba *Human Rights Act* was passed in 1970. Four years later, a new Act was introduced which reflected the experience gained during the intervening period and, since 1974, there have been many minor amendments. Some of these were technical in nature, and some were intended to expand the groups or classes of persons to be protected from discrimination, such as the addition of physical handicap as a specified group characteristic in 1977 and mental handicap in 1982. None of these amendments, however, substantially altered the manner in which the legislation was administered by the Manitoba Human Rights Commission.

Recognizing the need for a major review, the Manitoba Association of Rights and Liberties initiated a Citizen's Task Force to examine the legislation; and its report, published in 1979, recommended major changes. The Manitoba Human Rights Commission, then chaired by Mr. Sig Enns, studied the report and prepared a response which was submitted to the Attorney-General in 1981. The following year, a newly appointed group of Commissioners, chaired by Dale Gibson, reaffirmed the importance of this issue. A Legislation Committee was established and efforts to bring about improved legislation continued.

The Committee critically examined all aspects of the legislation, reviewed the laws of other jurisdictions and the rulings of various courts and tribunals, and, early in 1983, consulted with the people of Manitoba through public hearings in Winnipeg, Brandon, Steinbach, Beausejour, Thompson, and The Pas. The result was the development of the "Proposed Manitoba Code of Human Rights" which was submitted to the Honourable Roland Penner, then Attorney-General, before being made public in May 1984. Although there was no immediate response from the Manitoba Government, the proposal was carefully examined by the human rights community in Canada and many aspects of the proposed *Code* found their way

into the human rights statutes of other jurisdictions.

Finally, late in 1985, the Attorney-General asked the Commission to review the proposed *Code* and to identify any changes which appeared to be warranted in light of new developments. To the Commission, this was a welcome indication that the process for the introduction of new human rights legislation was underway. It was, however, more than a year before Bill 47 was introduced in the Manitoba Legislature. The Bill was passed on July 17, 1987 and, on December 10th (the 39th Anniversary of the Universal Declaration of Human Rights), *The Human Rights Code* became law in the province of Manitoba.

One of the most significant features of the new legislation is its expressed paramountcy over all other Acts of the Legislature (in the absence of specific provisions to the contrary). This will remove any confusion which would result from conflicts between statutes. *The Code* contains several other provisions intended to strengthen and clarify existing protections. There are now specific prohibitions against systemic discrimination, failure to reasonably accommodate special needs, harassment, and discrimination based on pregnancy and other gender-determined characteristics as well as sexual orientation.

Many of the new features are designed to bring about greater fairness and consistency in the application of *The Code*. One such provision entrenches the principle of staggered terms of office for Commissioners. These are the persons who are appointed to oversee the work of the Commission and the disposition of complaints. Under *The Code*, only one-third of the terms will expire in any given year, thereby ensuring that new appointees will have the opportunity to benefit from the experience of others.

Fairness and objectivity of the adjudication process has also been enhanced. Adjudicators will now be appointed, in rotation, from a pre-existing panel. This replaces the prior procedure of ad hoc appointments by the Attorney-General. Although the adjudication continues to take the form of a public hearing, the adjudicator will now have the power to order that the identity of the parties not be published until a decision has been rendered. Adjudicators will also be required to ensure that appropriate interpretation services are available for any party requiring such service in order to fully understand the proceedings.

Complainants will benefit from the availability of stronger remedies and sanctions for substantiated contraventions of *The Code*. For example, when malice or recklessness is involved, an adjudicator may order the payment of punitive damages in addition to other forms of monetary

compensation for the complainant. Another provision acknowledges the special impact of systematic discrimination by empowering the adjudicator to order the adoption and implementation of an affirmative action or other special program in such cases. For matters referred to prosecution instead of adjudication, the maximum fine for a conviction has been raised to \$10,000 (\$2,000 for an individual) and the convicting justice may also order any of the remedies which would be available through adjudication. In addition, the Government has indicated its commitment to the principles of *The Code* by the inclusion of a section which states that non-compliance with *The Code* may provide cause for the cancellation of a government contract.

The Code also contains a number of provisions of interest to the respondent party to a complaint. For example, when a complaint has been filed, the respondent will now be served with a copy of the complaint within thirty days. Another provision sets out a respondent's right to provide a formal written reply to the complaint. If a matter cannot be voluntarily resolved and is therefore referred to adjudication, this reply will be provided to the adjudicator along with the complaint form to ensure simultaneous presentation of the positions of both parties. (See page 6 for a more detailed account of the complaint process.)

Of particular significance to the business community is the provision for binding advisory opinions, a concept not found in any other Canadian human rights statute. This provision allows an employer, rental agent, or other such person to apply to the Commission for a prior ruling with respect to a business practice affected by *The Code*. For example, an employer may consider a group characteristic such as religion to be a relevant factor when recruiting for a specific job. By applying for an advisory opinion, he or she would be asking the Commission to determine whether such a consideration would constitute unreasonable discrimination under *The Code*. The Commission would consider all relevant facts and law and, if satisfied that the distinction was reasonable and "bona fide", it would so indicate in a written advisory opinion. Such an opinion would provide the assurance that a subsequent complaint from a person of a different religion would not result in a finding of illegal discrimination. (A detailed description of the application process and the effect of advisory opinions can be found on page 7.)

Provisions such as these will clearly benefit all Manitobans whether they are members of minority groups, members of the business community, or other citizens. While it is true that legislation alone does not change attitudes, a human rights statute which acknowledges and entrenches the right to fair and objective treat-

ment of all persons, such as does *The Code*, is clearly an effective tool for the promotion of both attitudes and behaviours which will bring about greater equality of opportunity in our society.

Of deep concern to the Commission was the fact that such important features of *The Code*, some of which represent a pioneering approach to the administration of human rights law, were generally ignored during the debate around the introduction of this legislation. Unfortunately, the publicity centered almost exclusively on the inclusion of "sexual orientation" among the listed group characteristics. This reference was not a dramatic change from the previous legislation in that general prohibitions against discrimination "without reasonable cause" would certainly have encompassed discrimination based on sexual orientation. Furthermore, Quebec, Ontario, and the Yukon Territories had already seen fit to include this characteristic as one of the prohibited forms of discrimination in their human rights statutes. Nonetheless, the opposition was strident and the issue dominated the attention of the legislature and the media to the extent that the bill was sometimes referred to as "the gay rights bill". The tremendous task of correcting this unbalanced representation of *The Human Rights Code* now rests with the Commission's limited education program.

Board of Commissioners

Lorraine Sigurdson, Socorro Juan, and Brigitte Graba, whose terms expired in 1987, were re-appointed for additional three year terms. Louise Cloutier, Patricia Turner, and Jill Oliver left the Commission for various reasons over the course of the year. Two of the three vacancies have been filled with the appointments of Helen Warner and Kue Young. One vacancy remained at year end.

Biographical information about the Commissioners can be found in Appendix D.

Staff

Early in the year, Steve Landon resigned from his position as Intake Counsellor. This position was subsequently filled by Derek Legge.

Two additional vacancies occurred when Enforcement Officers, Helen Forrest and Sandra Devon accepted positions elsewhere in the Manitoba Government. The successful applicants for these positions were Debra Beauchamp and Victor Schwartzman.

The reclassification of two existing enforcement positions led to the promotions of Buelah Blake and Sharon Wickman to positions as Team Supervisors.

Enforcement

In enforcing *The Human Rights Code*, it is the responsibility of the Commission's enforcement program to investigate complaints of discrimination to determine if a violation has occurred. Where there is evidence to support the complaint, staff also assist in the negotiation of a voluntary resolution of the matter which is mutually agreeable to all parties.

In the Commission's 1986 Annual Report, it was suggested that, with a full staff complement, the coming year might bring a reduction in the backlog of complaints. Unfortunately, the resignation of three staff persons during 1987 created vacancies which took several months to fill. In addition, 1987 brought 302 new complaints, representing an increase of 25% over the previous year. As a result, the Commission was able to complete only 80% of the number of complaints filed and the backlog increased accordingly.

The dispositions of completed cases show a disturbing increase in the percentage and numbers of withdrawn complaints over the past several years, correlating with the growth of the backlog. Not surprisingly, complainants are frequently frustrated by the delays before their complaints can be investigated and, at times, by the resulting loss of witnesses or other evidence, prompting them to withdraw or abandon their complaints. The Commission is concerned about this trend and is continuing various efforts to reduce these delays. These efforts include structural and procedural changes, some of which are embodied in the new *Human Rights Code*.

A major activity of the latter part of the year was the preparation for the new *Human Rights Code*. New procedures had to be developed for such activities as the issuing of advisory opinions, the service of complaints, and the processing of respondents' replies to complaints. Staff training was necessary to ensure understanding of the expanded protections under *The Code* and the required procedural changes. In preparation for implementation of the new procedures, a special project was undertaken to expedite the complaint process and reduce the backlog of 150 complaints which had been filed under the old Act. This project was extremely successful and permitted some progress to be made with respect to 77% of these complaints.

To improve the quality and efficiency of the conciliation process, the Commission, with the assistance of the Student Temporary Employment Program, undertook a review of judicial precedent on damage awards and other remedies available under Canadian human rights legislation. The resulting compilation of precedent cases and commentary is a valuable research tool for the enforcement program and

will save valuable time and effort in the complaint process.

While the new *Code* has expanded some protections and reinforced others through specific statutory language, many complainants who have filed complaints under the previous *Human Rights Act* remain vulnerable and anxiously await the outcome of key cases still in progress. In this regard, the Commission is encouraged that, in 1987, the Supreme Court of Canada granted Leave to Appeal two such cases concerning sexual harassment and discrimination based on pregnancy — both significant barriers to equality of opportunity for women in this country.

The Commission has also been encouraged by other judicial rulings which increasingly recognize human rights statutes as "fundamental law" and therefore deserving of a broad interpretation to achieve their purpose. As a result of this approach (mandated by the Supreme Court of Canada), a Manitoba court in 1987 overturned a previous ruling by an adjudicator concerning discrimination against a blind person. The court held that the adjudicator erred when he refused to recognize the complainant's right to be accompanied by his dog guide in a restaurant without being required to produce proof of his blindness to the restaurant operator. It is hoped that this broad and purposive approach to the interpretation of human rights legislation will continue to be followed by the courts.

For more details on legal proceedings, see Appendix A. Statistical information on the enforcement activities of the Commission can be found in Appendix C.

Special Programs

During 1987, the Commission received thirty-one applications for approval of special programs under Section 9 of *The Act*. These programs were offered by employers, service agencies, educational and training institutions, and other groups who wished to provide greater access to employment or other needed services to specific disadvantaged target groups such as women, Native people, immigrants, youth, disabled persons, and visible minorities.

The Commission's role with respect to affirmative action and other special programs has been significantly affected by the new legislation. The new provisions are framed in the language of *The Charter of Rights and Freedoms* and declare that such programs do not constitute illegal discrimination. Written approval by the Commission is, therefore, no longer required to bring such programs into compliance with the legislation. In the event of a complaint, the Commission would investigate and, if the program met the requirements of *The Code*, the

complaint would be dismissed. It should be noted, however, that an advisory opinion could be requested which would, in effect, provide for the prior approval of a program which was found to meet the established criteria and standards.

In the 1986 Annual Report, the Commission advised of its plan to publish guidelines with respect to special programs. Because of the dramatic impact of the new legislation, the publication of these guidelines has been delayed. This project will be a high priority for the coming year.

Statistical information related to Special Programs can be found in Appendix C.

Public Education

Public Education activities include speaker services, the publication of literature, seminars, contests, and a variety of other projects designed to fulfill the Commission's education mandate. The delivery of preventative education programs to the business sector continues to be designated as a high priority, as does the promotion of the teaching of human rights issues in the educational institutions in the Province. Public education also includes efforts to increase the awareness of the protections and remedies of *The Code* which are available to victims of discrimination, community outreach, and the promotion of effective affirmative action plans and other special programs.

In its efforts to facilitate the teaching of human rights, the Commission took part in a working group established by Winnipeg School Division #1 to develop human rights curricula for grades 7-12. The group completed the grade 7 pilot unit in December of 1987 and will pilot the unit in the spring of 1988. The Commission also assisted Manitoba Education and the Canadian Human Rights Foundation to pilot human rights curriculum materials for grades 4-6. These materials were developed by the Foundation, a national non-governmental organization established for the promotion of human rights. In the fall of 1987, the Commission began research on the issue of human rights and the school environment. The research is intended to serve as the basis for a manual to be developed in 1988 to provide school administrators with guidelines for the administering of schools in keeping with human rights principles. In addition, the Commission distributed resource materials and other information to approximately 200 Manitoba teachers throughout the year.

The Commission is also attempting to facilitate teacher training and inservice programming in human rights teaching methods. In this regard, an article on the subject of human rights in

employment was prepared for the assistance of school counsellors. It was published in the *Manitoba Journal of Counselling*. As in previous years, the Commission facilitated a workshop on the topic "Teaching of Human Rights" at the annual Special Area Groups (SAG) Conference sponsored by the Manitoba Teachers Society. The Commission also worked with Manitoba Education, Core Area Initiative, and the IDEA Centre to develop a proposal for the development of a training program for educators on the topic, "Racism, Discrimination, and the School System". The proposal has been accepted by the Seven Oaks School Division and is being considered by others.

During 1987, the Commission continued to work towards the development of a comprehensive program of business education. With the new legislation, priority has been given to the revision of existing publications, but some new projects are in progress. In order to assist the business community to understand some of the new requirements of *The Code*, the Commission has initiated the preparation of a series of fact sheets to be developed into an information kit for businesses.

Other educational activities undertaken during the past year included the preparation of a response to the Task Force on Multiculturalism, the initiation of a research project related to affirmative action, and the development of a multi-lingual brochure.

Human Rights Day

Again in 1987, the Commission initiated and coordinated a number of activities in celebration of the anniversary of the Universal Declaration of Human Rights on December 10th. The theme of "Light a Candle for Human Rights" was again used to encourage and facilitate the participation of all Manitobans in the recognition of the significance of human rights both at home and abroad.

The highlight of a ceremony at the Manitoba Legislative Buildings was the announcement of the proclamation into law of the new *Human Rights Code*. The first annual Human Rights Journalism Award, co-sponsored by the Manitoba Human Rights Commission and the Winnipeg Press Club, was awarded to Jim Compton and Andy Blicq for a CBC documentary entitled *Peguis Story*. (The award itself, a Chilean Arpillera depicting a demonstration for freedom and peace, was chosen as the subject for the cover of this Annual Report.) An honourable mention went to Dave McLaughlin for a CBC radio documentary on Central American refugees. The event also included the first public showing of a 4' x 8' mural on human rights sponsored by CARFAC. Thirty-six Winnipeg artists contributed to the mural.

Throughout the province, 125 schools and organizations participated in the celebration with a wide range of activities including classroom discussions, a human rights awareness day, meditation and prayer, and the lighting of candles to signify the importance of the principles of equality and human rights. Over 20,000 buttons with the inscription "Light a Candle for Human Rights" were distributed to Manitobans who participated in these activities.

The Province of Manitoba and the following municipal governments formally proclaimed December 10th to be Human Rights Day:

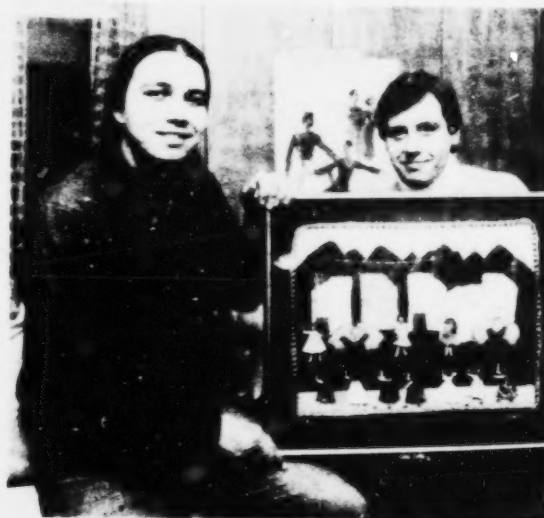
Town of Birtle
Rural Municipality of Cornwallis
Town of Dauphin
Rural Municipality of Grey
Village of Lac du Bonnet
Village of McCreary
Village of Ste. Rose du Lac
Town of Selkirk
Town of The Pas
City of Thompson
City of Winnipeg



Above: Candlelighting ceremony at Legislative Building, Winnipeg



The Honourable Muriel Smith announces proclamation of the new Manitoba Human Rights Code on December 10, 1987.



Jim Compton (left) and Andy Blicq, of C.B.C. shown with The Chilean Arpillera presented to them as recipients of the first Human Rights Journalism Award.

National and International Events

The Commission continued its participation as a member agency of the Canadian Association of Statutory Human Rights Agencies and was well represented at the Annual Conference and business meeting which was held in Toronto, Ontario. The Commission also continues to be a member of the International Association of Official Human Rights Agencies.

Future Directions and Needs

Over the coming months and years, it appears that the challenge for the Manitoba Human Rights Commission will continue to be the effective fulfillment of their mandate in a climate of restraint. Although *The Human Rights Code* has not greatly expanded the Commission's role, it has created some additional demands which will require the allocation of time and resources.

For example, full implementation of the contract compliance provisions require the development of regulations to set out the nature of the requirements for affirmative action programs in activities which are the subject of a government contract. Although the substance of the regulations is to be determined by the Lieutenant Governor in Council on behalf of the Government, it will be incumbent upon the Commission to prepare and submit recommendations and to provide consultation and assistance to the Government in this regard.

The provision for advisory opinions is another feature which will impact on the Commission's workload. The Commission anticipated approximately 30-50 applications a year and requested additional resources to meet this demand. However, early indications are that the number is likely to be two or three times greater than predicted. This will likely result in a further increase of the backlog although the Commission is hopeful that this will, to some extent, be offset by the new procedures.

The small public programs staff of the Commission will be facing a very busy and demanding year as well. The brochures, guidelines, and other materials which were produced by the Commission to promote an understanding and awareness of *The Human Rights Act* will be revised to reflect *The Code* and will be published in both of Manitoba's official languages. Additional publications will be required to explain some of the new features of *The Code*, such as advisory opinions and contract compliance. Such materials are an integral part of the Commission's education program and are of particular value to the business community as a source of information for the avoidance of discrimination in business practices.

The Commission will continue to give priority to the prevention of discrimination through educational programs directed to the business community and the promotion of the teaching of human rights in Manitoba schools. It cannot, however, ignore its responsibility to ensure that the potential victims of discrimination are aware of their rights under *The Code*. Programs and activities directed towards those groups most vulnerable to discrimination will continue to be required.

One such group is those persons who have been or are perceived to have been exposed to the AIDS virus. The fear and panic which accompanies the threat of such a deadly disease creates a climate in which human rights are often sacrificed in the name of "public safety". While human rights legislation does not deny the validity of such considerations, it is essential that the risks are evaluated through a process of rational and informed thought. *The Code* prohibits "unreasonable" discrimination based on any form of disability including communicable diseases; and it is the responsibility of the Commission to provide information and assistance to those persons who may be required to balance the legitimate protection of the public and the rights of the individual when making business decisions.

A significant event of the coming year is the 40th Anniversary of the Universal Declaration of Human Rights. The preamble to *The Human Rights Code* acknowledges that the principle of the individual worth and dignity of every member of the human family, which underlies the Declaration, is the ultimate objective of all human rights legislation. In recognition of this reality, the Manitoba Human Rights Commission will be involved in many activities designed to invite and encourage the people of Manitoba to join in the celebration of this important milestone. It is hoped that 1988 will bring an increased awareness and appreciation for the privilege of living in a society which supports this principle and that Manitobans will demonstrate this appreciation through their participation in the celebration of Human Rights Day, December 10th and through their actions throughout the year.

Appendix A

The following are matters which are currently before Boards of Adjudication or the Courts.

Update on Matters Previously Reported:

Appeal: Govereau and Janzen vs. Platy Enterprises Ltd. (Pharos Restaurant)

(Previously reported in the 1984, 1985 and 1986 Annual Reports)

Background:

Tracy Govereau and Diana Janzen, employed as waitresses at Pharos Restaurant, alleged that during their employment, the cook of the restaurant continually harassed them by grabbing and touching their bodies and making lewd comments about their anatomy. They alleged that in spite of their protests, both to the cook and to the owner, the behaviour continued. Tracy Govereau alleged that her hours were reduced and that she was ultimately terminated by her employer because she complained to the management about the harassment. Diana Janzen alleged that she was forced to terminate her employment because of the cook's behaviour toward her. Both women alleged that they had been subjected to discriminatory conditions of employment and, ultimately, had been terminated because of their sex.

The investigation results appeared to support the complaints and conciliation was attempted but was unsuccessful. As a result, the Attorney General was requested to appoint a Board of Adjudication to hear and decide the matter. Mr. Yude Henteleff, Q.C. was appointed as Adjudicator and hearings were held in 1984.

On April 26, 1985, Mr. Henteleff delivered his decision on these cases. He found that the complainants were sexually harassed by the cook and that the employer was made aware of the harassment but failed to take any reasonable steps to assure that the workplace would be free from fear of sexual harassment. Mr. Henteleff found the company and the cook jointly and severally liable and ordered that Diana Janzen be compensated \$480 for lost wages and \$3,500 for damages. Tracy Govereau was awarded \$3,000 lost wages and \$3,000 general damages. Platy Enterprises Ltd. was ordered to provide the Commission with a letter agreeing to comply with *The Act* and, further, that under the direction of the Commission, Platy Enterprises Ltd. was to establish and maintain, in all of its restaurant premises, a program which would reasonably ensure that the restaurants would remain free of sexual harassment.

The respondent subsequently appealed the Adjudicator's decision to the Court of Queen's Bench challenging the scope and constitutionality of *The Act* itself and arguing that the quantum of damages assessed by the Adjudicator was excessive.

Justice Monnin rejected all the respondent's grounds of appeal but reduced the awards. Diana Janzen was awarded lost wages in the sum of \$480 and damages for loss of self-respect and hurt feelings in the amount of \$1,000. Tracy Govereau was awarded \$500 for lost wages and \$1,500 for hurt feelings and loss of self-respect. In addition, Justice Monnin found that a letter of undertaking to comply with and establish a program acceptable to the Human Rights Commission was outside the scope of *The Act*. He varied this order by ordering the respondent to ensure that the restaurant premises remain free of sexual harassment.

The respondent appealed Justice Monnin's decision to the Court of Appeal and the Appeal was heard May 26 and 27, 1986 by Matas, Huband and Twaddle, J.J.A. Regrettably, Justice Matas passed away before the decision was rendered on November 19, 1986.

Huband and Twaddle, J.J.A. held that sexual harassment did not constitute sex discrimination in the absence of clear wording to that effect in the legislation. They also found that there was no duty on an employer to provide a workplace free of sexual harassment. They found that the corporate employer was not liable for the actions of its cook because the company was not an accomplice of the act, did not have a policy to discriminate and because the cook had no express or implied authority to sexually harass the waitresses. In addition, it was found that the cook could not be considered part of the "directing mind" of the corporation because he exercised very limited managerial responsibilities. Justice Huband also held that a Board of Adjudication established for the purpose of determining whether a case of sexual harassment had been established, would be unconstitutional in that it would be infringing on powers conferred to courts at the time of confederation.

1987 Update:

The Commission, in reviewing the Court of Appeal's decision, concluded that the decision seriously eroded the principle of equality of opportunity as the result of the narrow interpretation of sex discrimination and the limitation on corporate liability. The Commission sought Leave to Appeal the decision to the Supreme Court of Canada. Leave to Appeal was granted on June 25, 1987. The Women's Legal and Education Fund (LEAF), an organization

dedicated to testing equality issues for women before the Courts, sought and was granted intervenor status in this case.

Appeal: Brooks, Allen and Dixon vs. Canada Safeway Ltd.

(Previously reported in 1984, 1985 and 1986 Annual Reports)

Background:

In 1983, Susan Brooks, Patricia Allen and Patricia Dixon filed complaints alleging that the employee disability benefit plan provided by the company discriminated on the basis of sex and family status by disqualifying pregnant women from receiving benefits. They alleged that under the terms of the plan, no benefits are payable during a seventeen week period commencing ten weeks prior to the expected week of confinement and ending six weeks after the week of confinement. Ms. Brooks experienced pregnancy-related disabilities and initially received benefits. However, she alleged that ten weeks before the expected confinement, her disability benefits ceased. Ms. Allen and Ms. Dixon experienced pregnancy-related disabilities which commenced within ten weeks prior to their expected weeks of confinement and Ms. Allen continued to experience pregnancy-related disabilities following the birth of her child. All three were denied eligibility for benefits. In contrast, employees who experienced other forms of disability continued to be eligible for benefits under the plan throughout the period of their disability.

Since the investigation revealed an apparent contravention, conciliation was attempted but was unsuccessful. The Commission requested the Attorney-General to appoint a Board of Adjudication to hear and decide the complaints, and Mr. J.F. Reeh Taylor, Q.C. was appointed as Adjudicator. It was agreed that the Brooks complaint would be heard and decided first.

On October 26, 1984, Mr. Taylor ruled that the complainant had not filed her complaint within six months of the notification of her ineligibility for benefits and that therefore he had no jurisdiction to deal with the complaint on its merits. He also ruled that, while the evidence clearly established there was indeed discrimination against Ms. Brooks under the terms of the disability benefit plan, the discrimination was by reason of her pregnancy and not by reason of her sex and family status. He noted that pregnancy was not explicitly stated in *The Human Rights Act* as a prohibited ground of discrimination and therefore dismissed the complaint.

The Allen and Dixon cases were heard November 28 and 29, 1984, and a decision rendered February 8, 1985. Although these complaints

were held to have been filed in a timely manner, they also failed, according to the Adjudicator, for the same reasons that discrimination because of pregnancy was not equivalent to discrimination because of sex and/or family status. The Commission filed an appeal of the decision in all three cases.

The appeal was heard by Mr. Justice Vern Simonsen of the Court of Queen's Bench who rendered a decision on November 27, 1985, in which he denied that appeal. He agreed with the Adjudicator that there was discrimination against the complainants by reason of their pregnancy, but not by reason of their sex or family status. The Commission filed an appeal to the Court of Appeal.

The appeal was heard and a decision rendered by O'Sullivan, Huband and Twaddle, J.J.A. on May 6, 1986. The Court held that there was no discrimination and dismissed the appeal.

1987 Update:

On March 26, 1987, the Commission was granted Leave to Appeal the Court of Appeal decision to the Supreme Court of Canada. At the year's end, no date had been set for the appeal to be heard. The Women's Legal Education and Action Fund (LEAF), a national organization dedicated to pursuing women's equality issues in the courts, requested and was granted intervenor status in the cases.

Note: Complaints were also filed against Dominion Life Assurance Company, the underwriters of the benefit plans. It was agreed at adjudication that these complaints would be adjourned pending a final determination of the issues in the Canada Safeway complaints.

Obirek, Apsit and Gaffrey vs. Manitoba Human Rights Commission

(Previously reported in the 1985 and 1986 Annual Reports)

Background:

In 1985, the Commission approved an affirmative action program of the Manitoba Government's Department of Natural Resources whereby Native Indians would be given preference in the granting of wild rice licenses over a period of two years.

Following the Commission's approval of the affirmative action plan, Alfred Apsit and Laurie Gaffray, representing themselves and the Manitoba Rice Farmers Association filed an Originating Notice of Motion asking the Court to quash the Commission's decision, alleging that it was made contrary to the principles of natural justice.

Specifically, they claimed that the Commission should have heard evidence under oath and provided them with an opportunity to cross-examine on the evidence. They also alleged that the Commission's approval of the program was unconstitutional in that the affirmative action plan was contrary to the equality provisions of *The Charter of Rights*.

The motion was heard before Mr. Justice Jewers who ruled that the Commission was acting as a purely administrative and not as a quasi-judicial tribunal when approving a program under Section 9 of *The Act*. As such, the Commission must act "fairly" in rendering its decision. The Court ruled that the Commission "acted more than fairly" in that all interested parties were advised of the Special Program application, a hearing was held and interested parties, including the applicants, were given a full opportunity to respond to the plan, both orally and in writing.

With respect to the applicants' *Charter* challenge, the Court stated that the Special Program, approved by the Commission was, on its face, inconsistent with Section 15(1) of *The Charter* and that there is an onus on the Commission to demonstrate that the plan which it approved falls within the exception provided by Section 15(2) of *The Charter*. Justice Jewers concluded that he did not have enough evidence to determine if the beneficiaries of the plan are "disadvantaged individuals" and that the affirmative action plan would "ameliorate their conditions". He therefore ordered a trial of the issues to determine:

- 1) whether the affirmative action program complied with Section 15(2) of *The Charter* and;
- 2) if not, whether Section 9 of *The Manitoba Human Rights Act* was a "reasonable limit" within Section 1 of *The Charter*.

Hearings were concluded before Justice Simonsen of the Queen's Bench in September 1986.

1987 Update:

A decision of the Queen's Bench was rendered November 16, 1987.

On the first question, Mr. Justice Simonsen ruled that the affirmative action program, as submitted by the Department of Natural Resources and as approved by the Human Rights Commission, did not comply with Section 15(2) of *The Charter of Rights*. Although he accepted that Native people were disadvantaged generally, he was not satisfied on the evidence that they were disadvantaged in relation to wild rice harvesting.

Furthermore, he found that the program (which provided preference in the granting of licences to Native Indians) resulted in exclusive licens-

ing to Native people and could not be justified if it "unnecessarily denies the existing rights of the non-target groups". According to Justice Simonsen, an affirmative action program can only be justified under Section 15(2) of *The Charter* if the program addresses the cause of the disadvantage suffered by the target group. He concluded that any disadvantage suffered by Native people was not caused by their inability to obtain licenses and that preferential licensing for Native people was therefore not justified.

On the second question, Mr. Simonsen ruled that, if an affirmative action program failed to comply with *The Charter*, it could not be permitted by other legislation such as Section 9 of *The Human Rights Act*.

At the time of writing this report, the Commission was considering its options as to an appeal from the decision.

Wadhawan vs. McDonald Supply Limited, McDonald Supply Appliances Limited and Ron Borowski

(Previously reported in the 1986 Annual Report)

Background:

Jagdish Wadhawan who is of East Indian descent, filed a complaint alleging that during his employment as a service manager, he was subjected to discriminatory terms and conditions of employment in the form of racial harassment by his supervisor, Ron Borowski, and that he was subsequently terminated from his job. He alleged that he was discriminated against because of his race, colour, nationality and ethnic or national origin.

The investigation results appeared to support the complaint. However, since a voluntary settlement could not be negotiated, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter.

Mr. Vic Savino was appointed Adjudicator and hearings were held in 1986. A decision was rendered November 19, 1986. Mr. Savino found Jagdish Wadhawan was subjected to derogatory remarks and insulting language about his East Indian background to the point that it "poisoned his workplace environment". He found that the supervisor, Ron Borowski, was primarily responsible for such remarks, but noted that junior employees also seemed to follow the lead of the senior person in the use of derogatory racial remarks. Mr. Savino also found that Ron Borowski threatened to dismiss Wadhawan and acted on his racially motivated taunt at his first opportunity following a company reorganization when he was given authority to dismiss employees. The Adjudicator found no evidence

to substantiate alternate causes for dismissal alleged by the respondent.

In apportioning liability between Borowski, McDonald Supply Limited (MSL) and McDonald Supply Appliances Limited (MSA), Mr. Savino noted that MSL did take some reasonable action to mitigate the problems in the workplace, as they had attempted to deal with the problem through several meetings and had reversed a previous attempt by Borowski to fire Wadhawan. On the other hand, MSA, the successor company who acquired the assets of MSL, knew about the racial harassment and permitted the dismissal, knowing Borowski's racially motivated attitude. The Adjudicator ordered that Borowski and MSA were jointly and severally liable to pay Wadhawan \$15,000 in lost wages. For damages to feelings and self-respect, Mr. Savino ordered \$2,000 payable by Borowski, \$500 payable by MSL and \$5,000 payable by MSA.

1987 Update:

The respondents have filed an appeal to the Court of Queen's Bench but as at year's end, the appeal had not yet been heard.

Appeal: Callen vs. Sticky's Service and Drive Inn (Dauphin)

(Previously reported in the 1986 Annual Report)

Background:

Kathi Callen had been employed as a waitress at Sticky's Service and Drive Inn in Dauphin, Manitoba. She alleged that throughout her four months of employment there, she was continually harassed by the owner/manager, Mel Stokotelnny. She claimed that the sexual harassment consisted of verbal propositions and lewd comments, as well as unwanted kissing and physical touching of various parts of her body. She also alleged that, when the owner became aware that she had contacted the Human Rights Commission for advice, he terminated her employment for having done so. The respondent denied any such harassment and indicated it was his habit and practice to engage in "banter" and "teasing". He denied terminating the complainant because she had contacted the Human Rights Commission and maintained that she was let go because she was too slow, talked too much and had a habit of "tip-trolling".

The investigation appeared to confirm the harassment and the termination due to retaliation, so conciliation was attempted, but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication and Douglas Paterson, Q.C. of Brandon,

was appointed as Adjudicator. Hearings were held in 1986.

Mr. Paterson rendered his decision on June 12, 1986. He found that Kathi Callen was sexually harassed by Mel Stokotelnny, both verbally and physically to the point of "poisoning" her work environment, causing her to feel humiliation and lessened self worth. In addition, he found that submitting to her employer's sexual advances was a condition of maintaining her employment. Regarding the retaliation complaint, Mr. Paterson noted that Mel Stokotelnny candidly admitted to tricking Ms. Callen into confirming her telephone complaint to the Human Rights Commission. The Adjudicator found that this evidence, together with the timing of her dismissal following this revelation and the lack of evidence as to any poor work performance, confirmed that she was terminated in retaliation for having contacted the Human Rights Commission.

Since Mel Stokotelnny was the "directing mind" of the corporation, Mr. Paterson found him and his corporation jointly and severally liable for lost wages approximating \$2,100 and damages for humiliation and lessened self-respect in the amount of \$1,000.

The respondent filed an appeal of this decision to the Court of Queen's Bench. A hearing of the appeal set for December 17, 1986 was adjourned pending the outcome of the application for Leave to Appeal to the Supreme Court in the case of Govereau and Janzen vs. Platy Enterprises Limited.

1987 Update:

See update for Govereau and Janzen vs. Platy Enterprises Ltd., page 17.

Matters referred in 1987:

Parisian vs. Hermes Restaurant Ltd.

Allegation:

Douglas Parisian is a blind person and is always accompanied by his trained seeing eye dog guide. He alleged that on June 19, 1985, in company with another person, he attended at Hermes Restaurant to have lunch there. At the entrance to the restaurant, the Manager, Chris Voulgaris, informed them that they could not enter with Parisian's dog and that he would have to leave the dog outside. Although Parisian tried to explain that he was dependent on his dog to get around, they were refused entrance. Parisian alleged that he was denied access based on his physical handicap and his dog guide.

The investigation results confirmed the complaint. However, a voluntary resolution could

not be negotiated, and the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter.

Decision:

Provincial Judge Frank Allen was appointed Adjudicator and a hearing was held January 9, 1987. A decision was rendered March 16, 1987.

Judge Allen found that Douglas Parisian had indeed been denied entry to the restaurant by Voulgaris because of Parisian's dog guide. He also acknowledged that Section 7 of *The Human Rights Act* permits a blind person to take their dog guide with them into a public place.

However, he concluded that, before a blind person could exercise that right, it is incumbent on them to produce evidence to the operator of the public place that they are indeed blind, such as registration as a blind person with the Canadian National Institute for the Blind. Because Parisian had not presented Voulgaris with such evidence, Judge Allen dismissed his complaint.

In view of the narrow interpretation given to *The Human Rights Act* and its restriction of the rights of blind persons, the Commission appealed the decision. The appeal was heard by Justice Coleman of the Queen's Bench who rendered his decision, December 17, 1987.

Justice Coleman followed the recent comments of the Supreme Court of Canada to the effect that human rights statutes are "fundamental law" and must be given a broad interpretation to achieve their purpose. He confirmed that Parisian had the right to have his dog guide with him at all times in the restaurant. "This dog guide was in effect a part of him and was entitled to be with him at all times and places where the public is accommodated." He ruled that this right was not conditional on producing proof that he was a registered blind person and there was no obligation on Parisian to do so.

Justice Coleman directed Hermes Restaurant Ltd. to not prohibit blind persons when accompanied by a dog guide from entering the premises. Further, he ordered the respondent to pay the complainant \$300 damages for injury to his feelings and self-respect.

As of the date of writing this report, no notice had been served by Hermes Restaurant Ltd. as to whether or not they intend to appeal.

Penniston, Williamson and Montague vs. Champs Specialty Restaurants Ltd.

Allegation:

The complainants who are Black males alleged that in December 1986, they were denied entry into Blue Jeans Cabaret because of their race, nationality and ethnic/national origin.

The investigation results revealed that the management of Blue Jeans Cabaret had a discriminatory policy which required greater scrutiny of Blacks and required that Blacks be denied entry into the Cabaret.

Upon reviewing the evidence, the Commission concluded that it appeared to substantiate the allegations. Given the seriousness of the complaints and the strength of the evidence, the Commission recommended that the Attorney General commence prosecution under *The Act*.

Decision:

On August 28, 1987, a court hearing was held. At the hearing, the bouncer and the Vice President of the respondent company entered guilty pleas. The presiding Judge imposed fines of \$300 and costs on each of the three counts that each of the respondents faced, totalling \$1,800 in fines. In the event of default of payment of the fines, the Judge ordered they serve three months in jail to be served consecutively. In disposing of the matter of the sentence, the Judge said that the two respondents did not have an easy position, but that they have a duty towards their patrons. He was satisfied on the basis of the facts that the two respondents did not want any Blacks in the Cabaret.

The Crown stayed charges against the Corporation because there was no evidence of any corporate policy or any direction by the Corporation that the respondents should deny entry to Blacks.

Summary Report of Legal Proceedings 1987

Carried over from 1986:

Complaint proceedings	23
Other proceedings	4
Total	30

Proceedings initiated in 1987:

Complaint proceedings	13
Other proceedings	0
Total	13

Dispositions - 1987:

Resolved, no hearing	6
Finding of discrimination	7
Dismissed, no contravention	0
Total	13

Matters outstanding at year end:

Complaints pending adjudication	16
Complaints before the Court of Queen's Bench	4
Complaints before the Court of Appeal	0
Appeals to the Supreme Court of Canada	6
Other proceedings in progress	4
Total	30

Appendix B

Sample Cases

The following are provided as some examples of types of issues that can be the subject of complaints, the range of dispositions, the types of voluntary settlements that can be achieved and some reasons for dismissal or alternative dispositions.

These examples are no way indicative of the current caseload or the relative numbers of settled and dismissed cases. Statistical information regarding the Enforcement Program can be found in Appendix C.

Each complaint is assessed on its own merits and settlements outlined in the following pages should not be considered as representing a particular trend or current norm.

Employment (Terms & Conditions)/Sex (Female)

Allegation:

The complainant was a journeyman industrial welder earning \$7.50 per hour. She alleged that two male workers who did the same work as she earned \$8 and \$10 per hour respectively. She further alleged that both men had been hired after her and that neither was a certified journeyman. She alleged that although she was as qualified or better qualified than the two men, the respondent (owner) continued to pay her less for the same job.

Investigation:

The respondent maintained that although the complainant knew the theoretical aspects of her trade, she had not had much practical experience and therefore believed her to be less qualified than the two men. He also said that he could not afford to pay her as much as the men.

The investigation confirmed that the complainant was paid less than the two men — the man earning \$10 per hour was better qualified than the complainant but the man earning \$8 per hour was no better qualified. Throughout most of her employment with the respondent, she and the male did the same work. However, closer to her termination, the respondent tended not to provide her with the same tasks as her male co-worker who was given more complicated welding jobs. Such job assignments appeared to have been made on the basis of sexual stereotyping rather than qualifications and abilities. The respondent had a tendency to give harder jobs to the male employees and when secretarial work needed to be done, he would call upon the complainant.

Disposition:

The Commission determined that the complainant's job duties were essentially the same as that of the male co-worker who earned \$8 per hour. Any differential in her job assignments and wages was based on her sex and not her qualifications and abilities which were equal to her male co-worker. Conciliation efforts were made to reach a voluntary resolution of the complaint during which the respondent agreed to pay the complainant a sum of \$400 in lost wages, representing the differential between her wages and that of her male co-workers during her period of employment.

Employment (Hiring)/Physical Disability (Colour Blindness)

Allegation:

The complainant alleged that he was denied consideration for employment as a fire fighter because he had a slight colour vision deficiency in the red and green range.

Investigation:

The investigation revealed that a significant function of the position of fire fighter is the requirement to identify various types of fires by their graduations of colour to ensure that appropriate methods and equipment are used for extinguishing them. The combination of tests used by the Fire Department (Ishihara and D15) were found to be reasonably job related and when administered to the complainant, they revealed that the nature and extent of his colour vision deficiency reasonably precluded him from being able to identify a number of fires that burn in the green spectrum.

Disposition:

As the specific nature of the complainant's colour vision deficiency could result in risk of injury to himself, co-workers and the public, the Commission concluded that the complainant's physical disability reasonably precluded him from the position of fire fighter. Accordingly, the complaint was dismissed in accordance with section 6(6) of *The Human Rights Act*.

Housing (Denial)/Source of Income (Social Assistance)

Allegation:

The complainant, a single parent with one child, alleged that she was denied housing without reasonable cause because she was on social assistance. She stated that she inquired about an apartment situated in Brandon and was advised that since she was on social

assistance, they would have to first speak with her welfare worker. When the complainant phoned back the next day, she was told that she could not rent the apartment as there would be no one to pay for damages when she moved out. Although the complainant indicated that she did not intend to damage anything, she was told to go to the low rentals where they accept welfare recipients.

Investigation:

The respondent denied that he refused to rent to the complainant because she was on social assistance. He stated that if a person is able to guarantee that they will pay for any damages to the apartment while they are renting, he will rent to anyone. The respondent indicated that welfare cheques are not garnishable and consequently, he would not be able to recover any damages that might be done. He said, however, that if the city welfare department would guarantee covering all damages, he would rent an apartment to the complainant. The investigation revealed that the respondent rented to pensioners whose pension income was also not garnishable, but the respondent indicated that those tenants were usually retired from businesses and farms and had considerable collateral.

Disposition:

The Commission determined that any likelihood of damages to the premises could be determined by a thorough rental and reference check on all applicants. The respondent's policy of requiring all tenants to have collateral had a discriminatory impact on lower income groups and in particular, on people receiving social assistance. The respondent, however, refused to conciliate the matter. As the complaint was abandoned by the complainant, it was not pursued further. The Commission, in closing the file as unresolved, advised the respondent that they felt the complaint had merit and that further action would be taken if a similar complaint was filed in future.

Employment (Termination) and Services (Denial)/Marital and Family Status

Allegation:

The complainants were husband and wife. The husband was employed as a teacher in a particular school division for the past 16 years. When the wife publicly announced her intention to run for office as a School Trustee in the same school division, the Board of Trustees passed a resolution to the effect that no immediate relatives of a trustee shall be employed in the school division during the term of office of that trustee. Immediate relative included son,

daughter, brother, sister, husband and wife. Both complainants alleged the policy was discriminatory on the basis of marital and family status. The wife alleged that her rights and privileges to run for office were denied because if she were elected, she would be required to vacate her seat or her husband's employment would be terminated. The husband alleged that his right to continued employment was denied because if his wife were elected, his employment contract could be voided unless his wife immediately vacated her seat. The union for the husband also filed a complaint on behalf of all teachers employed in that school division.

Disposition:

Shortly after the complaints were served, a motion was brought before the Queen's Bench, independently by the complainants seeking a declaration that *The Public Schools Act* would not require the termination of a teacher's employment contract if his or her spouse were elected trustee. The Court ruled in the complainant's favour. In response to this decision, the respondent school division, which had earlier rescinded its offending policy, chose not to reintroduce it. The wife was elected in the upcoming local election. No steps were taken to remove her from office or to terminate the husband's employment. The complaints were concluded with this successful resolution between the parties.

Housing (Denial)/Race & Colour

Allegation:

The complainant, a Black person, alleged that he was denied housing accommodation because of his race, colour, and ethnic or national origin.

Investigation:

The investigation confirmed that a Black man applied for tenancy in the subject block on two different occasions when an apartment was available for rent. Initially the caretaker confirmed that she had made excuses to the complainant in order to discourage him because of his race and colour. However, the respondent owner of the block, who is responsible for the caretaker's actions, denied that it had a policy or practice of denying housing to Black persons.

Disposition:

Since the evidence confirmed the complainant was denied housing by the caretaker because of his race and colour, conciliation was attempted. The respondent owner of the block agreed to consider the complainant for tenancy in any of its apartment blocks. In addition, the respondent provided a letter of compliance to the Human Rights Commission stating that all applicants for tenancy are considered by the respondent regardless of their race and colour.

The complainant indicated he was satisfied with this resolution and based on his expressed wishes, the Commission closed the file as settled.

Services (Terms & Conditions)/Race, Colour, Ethnic or National Origin (Chinese)

Allegation:

The complainant's 12 year son was detained at a department store for shoplifting an item under \$4.00 and was later charged with theft. While being held, the security guard allegedly made remarks to the complainant's son like "you Orientals are all alike" and "you foo youngs" and treated his son in a rough manner. When the complainant later spoke with the security guard, an argument ensued. The complainant alleged that the remarks and treatment he and his son were subjected to were discriminatory based on their race, colour and ethnic or national origin. He further alleged that the store did not normally pursue shoplifting charges where the item was under \$4.00 and that their decision to do so in this case was based on his son's race, colour and ethnic or national origin.

Investigation:

The investigation revealed that it was the department store's policy to charge all children 12 years old and over caught shoplifting regardless of the cost of the item. Store records indicated that 15 other 12 year olds had been charged during the year and that these individuals were of varying racial backgrounds. Although there was no evidence to substantiate the complainant's son had been treated roughly, it was confirmed that the comments "you Orientals are all alike" and "you foo youngs" were made by the security guard.

Disposition:

As the evidence substantiated that discriminatory and racially derogatory comments were made to the complainant's son, the department store agreed to a voluntary resolution of the matter. The store and the security guard provided the complainant and his son with personal letters of apology. The store also held a training session on human rights and offensive terms for staff and management. As both parties indicated they were satisfied with this resolution, the Commission closed the file as settled.

Employment (Terms & Conditions)/Physical Disability (Allergy)

Allegation:

The complainant alleged that he was discriminated against with respect to the terms and conditions of his employment because of his physical disability, an allergy to flour dust. He alleged that because of his allergy, he, at times, had to decline an opportunity to work if the particular assignment offered to him was located in an area of the plant where there was a high concentration of flour dust in the air. However, when he declined work for these legitimate medical reasons, his name was dropped to the bottom of the call-in list of employees. As a result, he was not offered the next assignment.

Investigation:

The investigation revealed the complainant had been employed by the respondent as a baker's helper for eight years and had developed an allergy to flour dust after three years of service. As a baker's helper, the complainant could be assigned to work in a number of areas which did not have a high concentration of flour dust. Under the Collective Agreement in place, whenever employees were laid off, they were subject to recall based on their seniority (years of service). The investigation confirmed that the complainant had declined assignments in areas where there was a high concentration of flour dust in the air because of his allergy. On each occasion, the complainant's name went to the bottom of the call-in list. No effort had been made to accommodate his allergy.

Disposition:

The respondent agreed to assign the complainant only to those areas where there was no high concentration of flour dust. Both the union and the respondent company recognized the call-in system had an adverse impact on the complainant and on physically disabled persons generally, by dropping them to the bottom of the recall list when they could not accept an assignment for valid medical reasons. The union and the respondent jointly agreed to modify the call-in system. If employees were unable to accept a call-in for a particular assignment based on valid medical reasons, they will not lose their positions on the recall seniority list, but will be offered the next available position. This new system accommodates workers who may have a physical disability, without placing them at a comparative disadvantage on recall.

As all parties considered the settlement satisfactory, the Commission closed the case.

Services/Employment (Terms & Conditions)/Physical Disability (Overweight)

Allegation:

The complainant alleged that her continued involvement in a south-western Manitoba employment training program was conditional on her losing weight. She further alleged that she was daily harassed by staff about her weight and was required to weigh-in bi-weekly.

Investigation:

The investigation revealed that the program's objective for all participants was to remove or diminish employment barriers. Upon entering the program, the complainant identified weight as an employment barrier. As the complainant did not wish to attend weight loss programs, it was required that her weight be logged bi-weekly as a means of monitoring her progress in dealing with the employment barrier. There was no evidence to substantiate that the complainant was daily harassed by staff about her weight.

Disposition:

The Commission determined that although the intent of the program was not to make weight loss a condition of remaining in the program, that requiring bi-weekly weigh-ins as a way of measuring the complainant's success did just that. Consequently, the employment training program agreed to change their focus from monitoring the complainant's weight to monitoring her efforts to overcome her employment barrier. Although this resolution was initially agreeable to both parties, the complainant later expressed dissatisfaction. The Commission felt, however, that as long as weight loss was not a condition of remaining in the program, monitoring the complainant's efforts to remove or better cope with her employment barrier (as established in their mandate) was not contrary to *The Human Rights Act*. Accordingly, the file was closed as unresolved. In closing the file, the Commission recommended to the Employment Training Program that in future, they not focus on a client's efforts to lose weight, but consider other alternatives such as improving a client's self image.

Housing (Denial)/Physical Disability (Use of Hearing Dog Guide)

Allegation:

The complainant alleged that she was discriminated against in that she was denied housing accommodation without reasonable cause and because of her physical disability; i.e. progressive hearing loss, which requires the complainant to rely on two trained hearing dogs in all aspects of daily living.

Investigation:

The investigation confirmed that denial of housing did take place on two occasions. On both occasions, the respondent would not allow the complainant to rent an available suite because of her hearing dogs.

Disposition:

The respondent offered to reconsider the complainant for tenancy and advised her of several suites which were available. The complainant subsequently moved into one of the suites.

Since all parties to this complaint indicated they were satisfied with this resolution, the Commission closed the file as settled.

Employment (Terms & Conditions)/Age

Allegation:

The complainant, a 16 year old student, was employed as a part-time salesperson with a Winnipeg merchandiser, while attending school. She had been employed for a year when she realized that she was paid less wages than other employees over the age of 18 who were doing the identical job.

Investigation:

The investigation revealed that the complainant's job duties were identical to those performed by four co-workers all of whom were over the age of 18 and all of whom were paid at a higher hourly rate. The investigation also revealed that the complainant was a valued worker and her level of sales was amongst the highest in the store. The respondent acknowledged the wage differential in spite of her satisfactory performance. They indicated that the wage differential was based entirely on minimum wage regulations under *The Employment Standards Act* which permitted a lower minimum wage for persons under the age of 18 than for persons over the age of 18.

Disposition:

While the regulations set a lower minimum wage for persons under 18 than was permitted for those over 18, at the same time, *The Human Rights Act* prohibited discrimination based on age. The Commission took the view that an employer could pay a minor higher than the minimum wage at any time and that, if their duties were the same as those performed by a person over 18, *The Human Rights Act* prohibited a differential lower wage. In addition, a ruling of the Supreme Court of Canada in *Craton vs. Winnipeg School Division* had held that where there is a conflict of statutes, *The Human Rights Act* took primacy. Based on this reasoning, a conciliation of the matter was attempted but, initially, was unsuccessful.

Given the lack of a voluntary resolution, the Commission requested the Minister to appoint a Board of Adjudication to hear and decide the complaint. Prior to the commencement of the Adjudication hearing, the respondent agreed to pay the complainant the differential in wages. Since the complainant had terminated her employment shortly after she became aware of the discrepancy, this differential amounted to \$253 for the year she had worked with the company.

While the Commission was of the view that an employer could set minimum wages without violating either *The Employment Standards Regulations* or *The Human Rights Act*, *The Employment Standards Regulations* appeared to have an adverse effect on the equality of opportunity of young people. The Commission drew this to the Government's attention and, shortly after the complainant's specific case was settled, the Government announced amendments to their minimum wage regulations to phase out the lower rate to young people. By April 1, 1988, Manitoba will have ended the practice of paying workers under the age of 18, a lower minimum wage than those over 18.

Employment (Terms and Conditions)/Sex (Sexual Harassment)

Allegation:

The complainant, a Manager Trainee, complained to the Commission that her supervisor sexually harassed her by making crude sexual remarks to her. She also alleged that when she objected to his behaviour he began to ridicule her in front of other staff and to give false reports about her work performance to management. Because of these reports she was removed from the Management Training Program, and this caused her to terminate her employment.

Investigation:

Although there were no witnesses to the alleged harassment, several current and former employees confirmed a pattern of sexual harassment by the same supervisor. The company had a policy prohibiting sexual harassment which included procedures to follow in dealing with the matter. However, the company claimed they were not given the opportunity to take any corrective action as the complainant had not mentioned the harassment to senior management. With respect to the complainant's other allegations, witnesses did not support that her supervisor ridiculed her in front of staff. There was also no indication that the complainant's supervisor provided the employer with false information about her because she rejected his sexual advances. The evidence indicated there were non-discriminatory reasons for removing the complainant from the training program.

Disposition:

Since there was a pattern of sexual harassment in the workplace, it was concluded that the complainant was probably sexually harassed, and that the nature was sufficient to poison her working conditions. The Commission took the position that the supervisor was part of the directing mind of the company, and that the company was therefore responsible for the supervisor's actions. Conciliation with the company and the supervisor resulted in the supervisor paying the complainant \$500 damages for her injury to feelings and self respect. Given this voluntary resolution, satisfactory to all the parties, the case was closed as settled.

Services (Denial)/Age (under 60 years old)

Allegation:

The complainant was under 60 years of age and an account holder at one branch of a trust company. He was required to pay a service charge for utility bill payments at the trust company unless he maintained a minimum monthly balance of \$1,000. He was also required to make utility bill payments through the automatic teller machine. He alleged the trust company's policies were discriminatory on the basis of age because account holders who were 60 years of age and over, were provided utility bill payment services free of charge, regardless of their account balances. Also, account holders who were 60 or over could pay utility bills directly at the counter.

Disposition:

The Commission determined that these special services for account holders 60 and over were justified considering the facts of the particular

situation, in accordance with Section 3(2) of *The Human Rights Act*. Studies have shown that senior citizens are economically disadvantaged as a class or group of persons and therefore less likely to meet the usual minimum balance requirements. The option to pay utility bills at the counter appeared to be a special measure based in part on mobility considerations for senior citizens to minimize discomfort by allowing them to complete all transactions at one location. In light of these considerations, the Commission dismissed the complaint.

Housing (Denial)/Marital & Family Status, Source of Income

Allegation:

The complainant, a Northern male resident with a wife and two children, alleged that he had attempted to rent a house owned by the respondent but, was advised that he would need a letter of support from his Community Council. He obtained this letter of support but, before his application could be given any consideration, his letter of support was rescinded by the Mayor of the Community Council. Ultimately, the house was rented to the Mayor's niece, a single parent receiving social assistance. The complainant alleged that he had been unfairly denied the opportunity to rent the house because of a preference given to the Mayor's niece and that this was discriminatory on the basis of his marital status, family status, source of income and without reasonable cause.

Investigation:

The investigation revealed that the procedure for applying for a house owned by the respondent did require a letter of support from the Community Council. However, in this case, the complainant's initial letter of support was rescinded by the Mayor in favour of the Mayor's niece. The investigation also revealed that the Mayor's niece had moved into the house that the complainant was applying for even before any approval had been given by the Community Council for her to do so.

While the investigation was ongoing, a new Mayor and Council were elected in the complainant's community. The respondent denied any preference for welfare recipients, and evidence confirmed they rented to both working people and recipients of social assistance. However, the new Mayor acknowledged that, in their opinion, the complainant should have been given the house because the previous Mayor appeared to have been in a conflict of interest position by personally providing his niece with the letter of support after rescinding the complainant's initial letter of support. Fur-

thermore, the new Mayor advised that the Council would not be involved in determining who should get a house in the community in the future.

Disposition:

During the investigation, the respondent advised the investigating officer that they were prepared to offer the complainant the next suitable accommodations that became available, with temporary accommodations provided in the interim. The complainant accepted the respondent's offer as suitable. Since no immediate vacancies were available, the complainant occupied the temporary accommodations for one year during which time the respondent provided the accommodations rent free. Since all parties to the complaint indicated they were satisfied with the outcome of the complaint, the Commission closed the file as settled.

Employment (Hiring)/Physical Disability (Back Injury)

Allegation:

The complainant alleged that he had been denied the opportunity to be considered for a position as a police constable. As a result of a medical examination conducted by the employer, he was deemed "medically unsuitable" because of an old back injury he had suffered years previously.

Investigation:

The respondent confirmed that the complainant had been rejected for consideration for employment as a police constable because a medical examination showed him as having "a degenerative disk disease". The investigation revealed that before the complainant had the medical examination, he had successfully completed a job related physical stress test. However, a medical examination concluded that the complainant was suffering from a degenerative disk disease of the lower back and although in good physical condition at the time he applied, an independent medical confirmed the degeneration was so rapidly progressive as to have a real impact on his ability to adequately function as a police constable.

Disposition:

Since it appeared that the complainant's physical disability would have prevented him from doing his job, the Commission determined that it was a reasonable occupational disqualification. In the particular circumstances, the respondent's decision not to hire the complainant was therefore reasonable. However, the employer was advised that dismissal of this specific complaint based on the applicant's med-

ical condition did not mean that all future applicants with back injuries should be precluded from employment as police constables. They were advised that each applicant must be considered on his/her own merits.

Services (Denial)/Age (Teenagers)

Allegation:

Two teenagers, 14 and 15 years of age, alleged they were discriminated against without reasonable cause and because of their age. Security staff at a shopping mall ordered one complainant to leave the food court area as she waited at a table, while her companion (the other complainant) ate the food she had purchased there. Security staff ordered the second youth to finish her meal within five minutes and to leave the mall as well. On a subsequent occasion, security staff ordered both complainants to leave the mall because teenagers were not allowed after 7:00 p.m. The complainants alleged that adults were allowed to sit at tables whether or not they purchased food and there were no time restrictions imposed on adults in the mall.

Investigation:

The Chief of Security confirmed it was the practice of the mall's security staff to evict teenagers from the mall if they were not purchasing food. He maintained operators of food outlets had complained in the past about teenagers loitering in the food court area. The Chief of Security also confirmed that teenagers were ordered by security staff to leave the mall after 7:00 p.m. The reason for this practice was to make room in the mall for serious shoppers.

Disposition:

The respondent agreed to a voluntary resolution of the complaints. The complainants received an apology for the conduct of the security staff on the occasions they were evicted from the shopping mall. The respondent also provided a letter of compliance to the Human Rights Commission, confirming a change of policy. They indicated that, while loitering could be grounds for eviction, all visitors to the mall would be treated equally regardless of age and no special restrictions would be imposed on teenagers.

Since all parties to the complaint indicated satisfaction with this resolution, the matter was closed as settled.

Housing (Denial)/Family Status, Age

Allegation:

The complainant, a Northern female resident, alleged that she had been denied rental of a suite when the respondent found out that the complainant had a child. She alleged the respondent told her she rented mostly to old age pensioners. The complainant felt that she had been discriminated against on the basis of her family status and age.

Investigation:

The investigation revealed that the complainant had approached the respondent to inquire about any vacancies and was told that a bachelor suite was available. Upon informing the respondent that the suite was for herself and her nine month old child, the respondent advised the complainant that she rented mainly to old age pensioners and that a baby on the premises might disturb the older tenants when they try to sleep. As a result, the respondent would not rent the suite to her.

The respondent also said she did not like to rent to anyone who had children because there were no facilities where children could play.

However, the investigation revealed that there was a playground located just across the street from the respondent's address where children could play. In addition, of a total of 25 apartments in the block, only three were occupied by retired pensioners. The other apartments were occupied by tenants of various age groups.

Disposition:

The respondent indicated she did not realize it was illegal to refuse to rent to applicants simply because they had children. To rectify the matter, she offered to reconsider the complainant as she had a one bedroom suite available. The complainant accepted the offer, applied for the one bedroom suite and moved in a short time later. The respondent also agreed to abide by human rights legislation in future. Since all parties to this complaint indicated that they were satisfied with this resolution, the Commission closed the file as settled.

Appendix C

Statistics

List of illustrations:

1. Intake Statistics
 - 1.1 Breakdown of Intake Contacts
 - 1.2 Intake Load by Province and Regions
 - 1.3 Files Opened by Grounds
 - 1.4 Files Opened by Statutory Category
 - 1.5 Files Opened by Grounds and Statutory Category
 - 1.6 Assessment of Files Opened
 - 1.7 Distribution of Files Opened by Location
2. Enforcement Statistics
 - 2.1 Formal Complaints Filed by Grounds
 - 2.2 Formal Complaints Filed by Statutory Category
 - 2.3 Disposition of Formal Complaints
 - 2.4 Disposition of Formal Complaints by Statutory Category
 - 2.5 Disposition of Formal Complaints by Grounds
 - 2.6 Year End Caseload Status Report for 1987
3. Speaker Service Statistics
 - 3.1 Total Speaker Service Activity
 - 3.2 General Audience Characteristics
 - 3.3 Minority Group Audiences
 - 3.4 Business Group Audiences
4. Special Programs/Affirmative Action Statistics
 - 4.1 Applications for Special Program Approval
 - 4.2 Special Programs Approved by Target Group

Definitions

Files opened — possible complaint, file opened for preliminary assessment

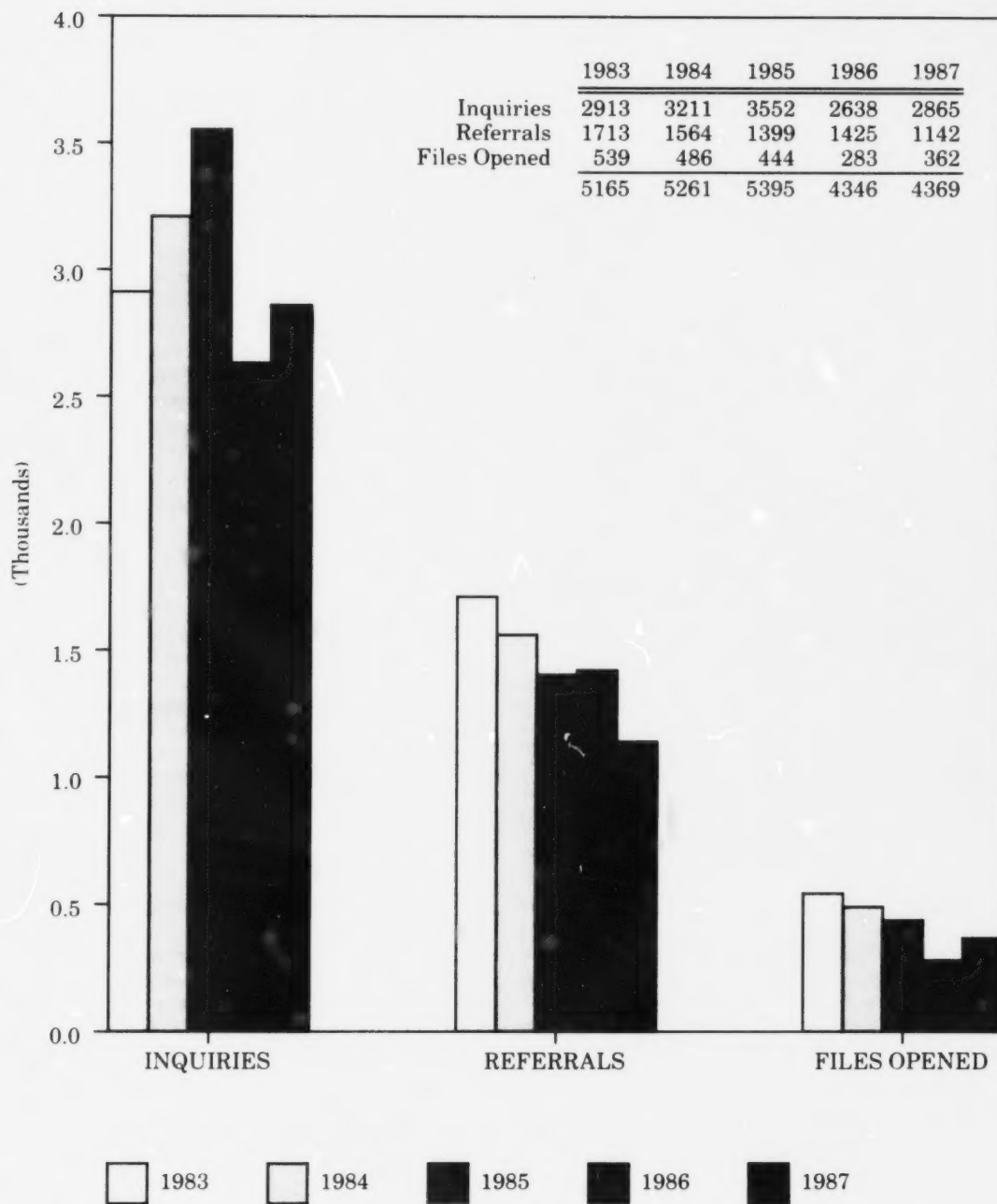
Formal Complaints — signed Complaint of Discrimination formally filed for investigation (see Appendix F)

(For a better understanding on the terms used in relation to enforcement statistics, see "Usual Steps in Processing Complaints" on page 9).

1. INTAKE STATISTICS

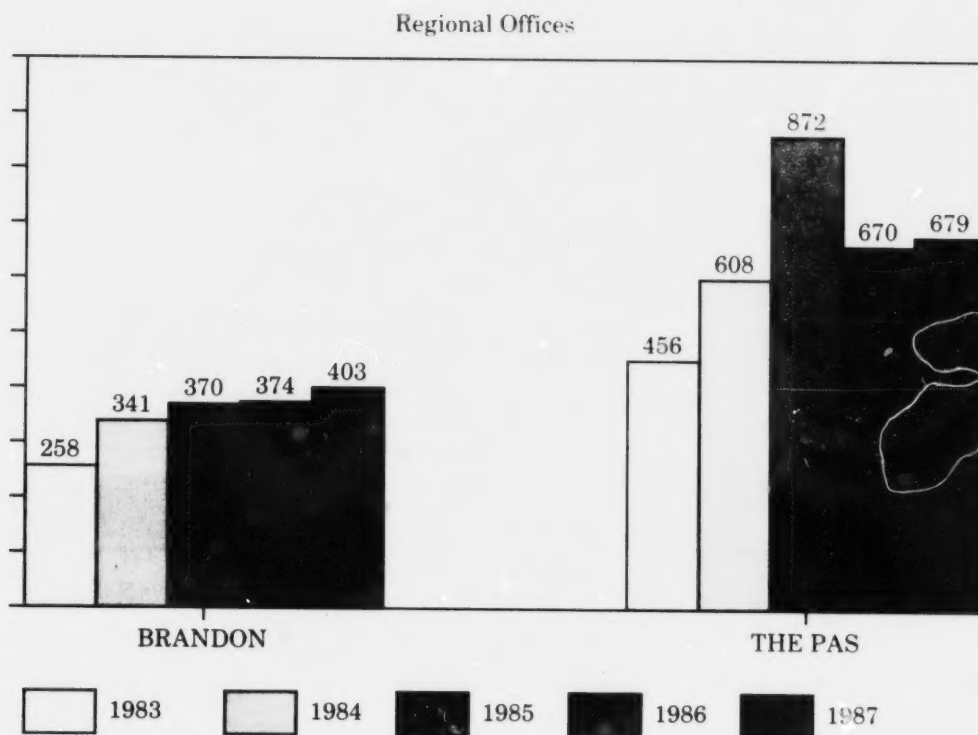
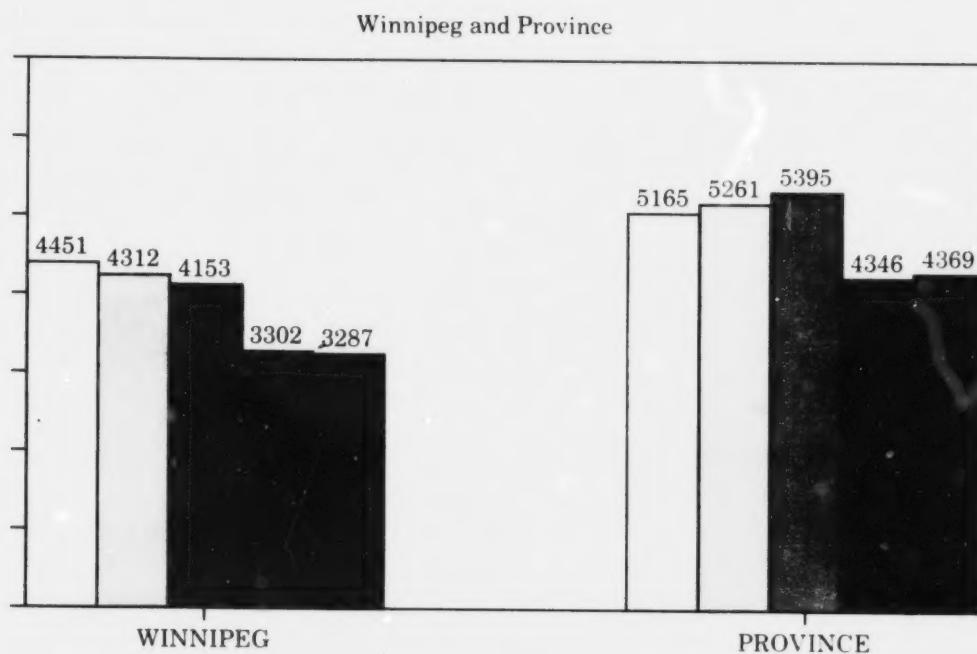
BREAKDOWN OF INTAKE CONTACTS 1983-1987

Figure 1.1



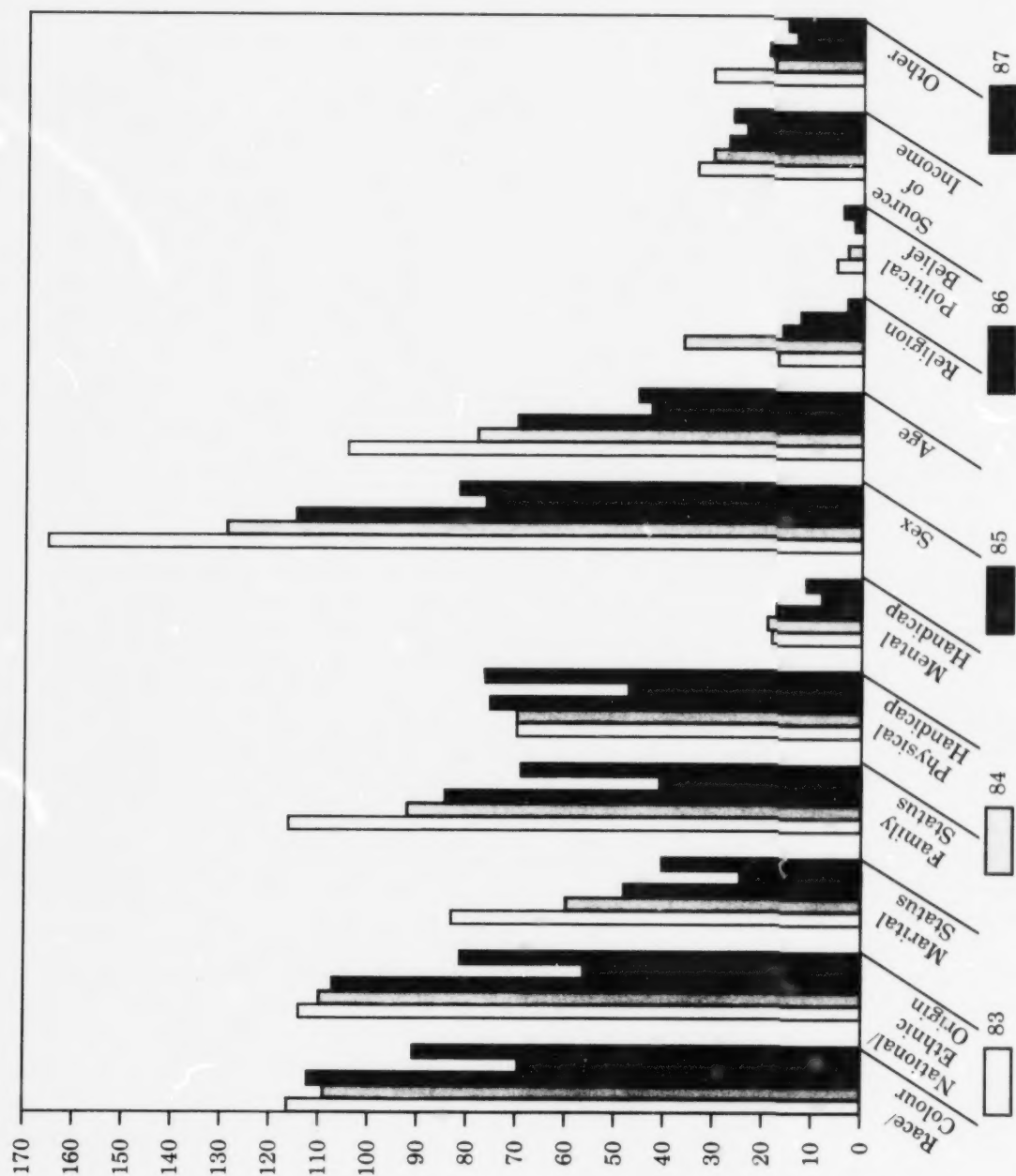
INTAKE LOAD BY PROVINCE AND REGIONS 1983-1987

Figure 1.2



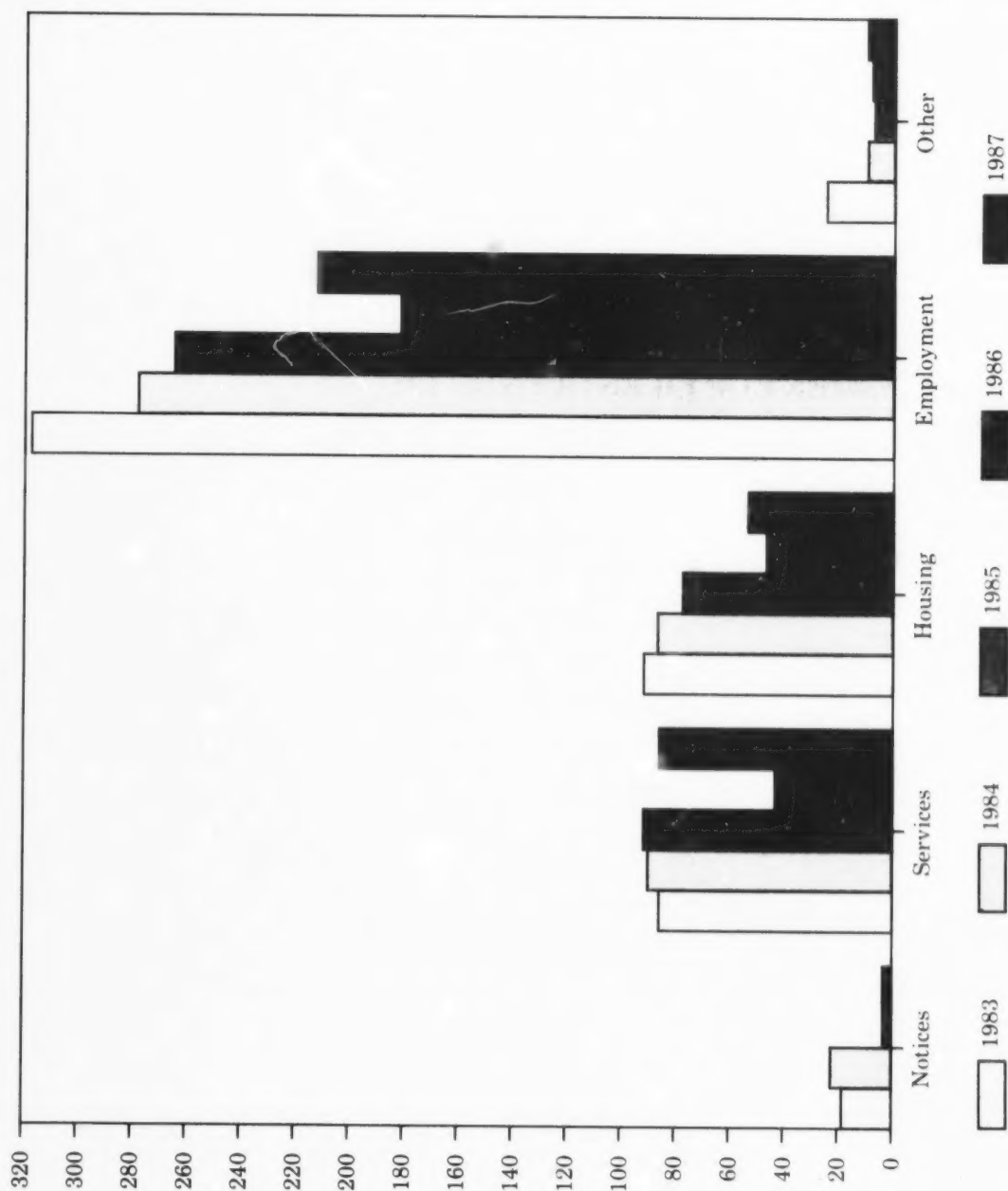
FILES OPEN BY GROUNDS 1983-1987

Figure 1.3



FILES OPENED BY STATUTORY CATEGORY 1983-1987

Figure 1.4



FILES OPENED BY GROUNDS AND STATUTORY CATEGORY 1986

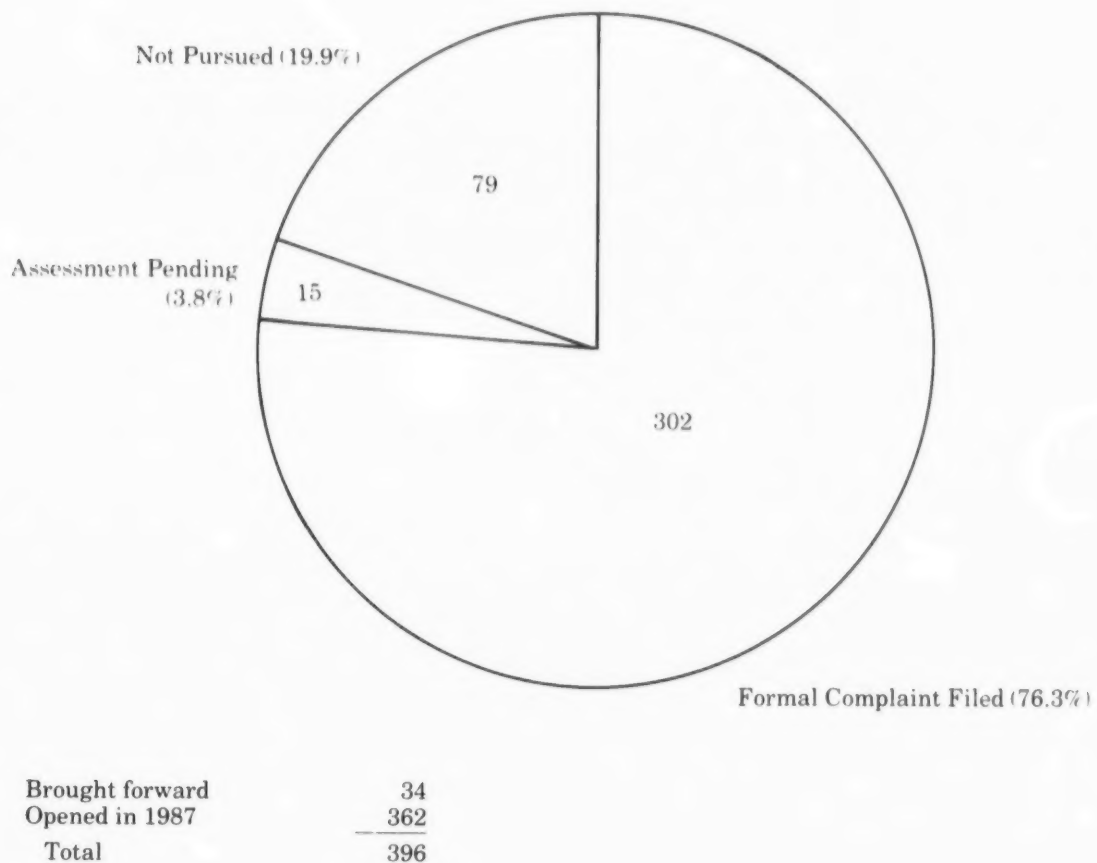
Figure 1.5

STATUTORY CATEGORY	Race Colour	Nationality Ethnic National Origin	Marital Status	Family Status	Physical Handicap	Mental Handicap	Sex	Age	Religion	Political Belief	Source of Income	Other	TOTAL
Notices	0	0	0	0	0	0	0	0	0	0	0	0	0
Services	32	27	8	9	20	4	6	15	0	1	4	6	132
Housing	13	10	16	19	3	0	3	3	0	0	22	3	92
Employment	43	42	16	37	49	7	70	27	3	3	0	6	303
Other	1	1	0	3	3	0	1	0	0	0	0	0	9
Total	89	80	40	68	75	11	80	45	3	4	26	15	536*

*This is an inflated figure as the total files opened for 1987 were 362. The reason the figure is higher here is that many cases have more than one ground of discrimination.

ASSESSMENT OF FILES OPENED 1987

Figure 1.6



DISTRIBUTION OF FILES OPENED BY LOCATION 1987

Figure 1.7

BRANDON		WINNIPEG	
Bowsman	1	Beausejour	1
Brandon	17	Fisher Branch	1
Carberry	1	Hadashville	1
Dauphin	3	Headingley	2
Neepawa	1	Lac du Bonnet	1
Portage la Prairie	2	Portage la Prairie	2
Reston	1	Petersfield	2
Ste. Rose	2	Selkirk	1
		Steinbach	3
		Ste. Anne	3
		Traverse Bay	1
		Winnipeg	279
THE PAS			297
Churchill	2		
Flin Flon	1		
Gillam	3		
Grand Rapids	1		
Leaf Rapids	1		
Lynn Lake	1		
Norway House	1		
Pukatawagan	1		
Snow Lake	1		
Sundance	8		
The Pas	4		
Thompson	13		
	37		
		TOTAL - 362	

2. ENFORCEMENT STATISTICS

FORMAL COMPLAINTS FILED BY GROUNDS 1985-1987

Figure 2.1

GROUND	1985		1986		1987	
Race, colour	87	16%	60	17%	79	18%
National/ethnic origin	78	14%	48	13%	71	16%
Marital status	34	6%	20	6%	35	8%
Family status	68	12%	35	10%	55	12%
Physical handicap	60	11%	39	11%	59	13%
Mental handicap	19	3%	6	2%	13	3%
Sex	96	17%	67	19%	60	13%
Age	49	9%	39	11%	39	9%
Religion	18	3%	9	3%	4	1%
Political belief	0	0%	2	1%	3	1%
Source of income	26	5%	17	5%	20	4%
Other	14	3%	14	4%	9	2%
	549*	100%	356*	100%	447*	100%

*This is an inflated total as many complaints have more than one ground of discrimination.
For actual total see Figure 2.2 below.

FORMAL COMPLAINTS FILED BY STATUTORY CATEGORY 1985-1987

Figure 2.2

STATUTORY CATEGORY	1985		1986		1987	
Notices	6	2%	3	1%	0	0%
Services	73	20%	35	14%	71	24%
Housing	62	17%	43	18%	45	15%
Employment	224	60%	159	65%	175	58%
Other	9	2%	5	2%	11	4%
TOTAL	374	100%	245	100%	302	100%

DISPOSITION OF FORMAL COMPLAINTS 1983-1987

Figure 2.3

DISPOSITION	1983		1984		1985		1986		1987	
	#	%	#	%	#	%	#	%	#	%
Dismissed	189	67.0%	153	60.5%	125	47.9%	173	60.1%	119	50.0%
Settled	84	29.8%	68	26.9%	62	23.8%	39	13.5%	39	16.4%
Withdrawn	0	0.0%	14	5.5%	47	18.0%	62	21.5%	65	27.3%
Unresolved	0	0.0%	0	0.0%	7	2.7%	4	1.4%	2	0.8%
Referred	9	3.2%	18	7.1%	20	7.7%	10	3.5%	13	5.5%
TOTAL	282	100.0%	253	100.0%	261	100.0%	288	100.0%	238	100.0%

DISPOSITION OF FORMAL COMPLAINTS BY STATUTORY CATEGORY 1987

Figure 2.4

STATUTORY CATEGORY	DISMISSED		SETTLED		WITHDRAWN		UNRESOLVED		REFERRED		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Notices	1	50%	1	50%	0	0%	0	0%	0	0%	2
Services	23	48%	8	17%	7	15%	1	2%	9	19%	48
Housing	19	48%	8	20%	11	28%	0	0%	2	5%	40
Employment	73	51%	22	15%	45	31%	1	1%	2	1%	143
Other	3	60%	0	0%	2	40%	0	0%	0	0%	5
	119	50%	39	16%	65	27%	2	1%	13	5%	238

DISPOSITION OF FORMAL COMPLAINTS BY GROUNDS 1987

Figure 2.5

GROUNDS	DISMISSED		SETTLED		WITHDRAWN		UNRESOLVED		REFERRED		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Race, colour	29	49%	8	14%	15	25%	0	0%	7	12%	59
National/ethnic origin	21	47%	4	9%	13	29%	0	0%	7	16%	45
Marital status	5	23%	7	32%	10	45%	0	0%	0	0%	22
Family status	18	46%	11	28%	8	21%	0	0%	2	5%	39
Physical handicap	18	60%	3	10%	8	27%	1	3%	0	0%	30
Mental handicap	4	40%	1	10%	5	50%	0	0%	0	0%	10
Sex	31	48%	8	13%	22	34%	1	2%	2	3%	64
Age	22	55%	11	28%	7	18%	0	0%	0	0%	40
Religion	5	56%	2	22%	2	22%	0	0%	0	0%	9
Political Belief	2	100%	0	0%	0	0%	0	0%	0	0%	2
Source of Income	10	59%	4	24%	3	18%	0	0%	0	0%	17
Other	5	45%	2	18%	3	27%	0	0%	1	9%	11
	170	49%	61	18%	96	28%	2	1%	19	5%	348*

*This is an inflated total as many complaints have more than one ground of discrimination.

YEAR END COMPLAINT STATUS REPORT FOR 1987

Figure 2.6

	1986	1987
Brought forward from previous year	345	302
Complaints filed in 1986	245	302
	590	604
Completed in 1986	288	238
Complaints in progress at year end	302	366
Status at Year End		
In investigation	185	202
In conciliation	16	14
In backlog	97	149
Pending closure	4	1
Total	302	366

3. SPEAKER SERVICE STATISTICS

TOTAL SPEAKER SERVICE ACTIVITY 1985-1987

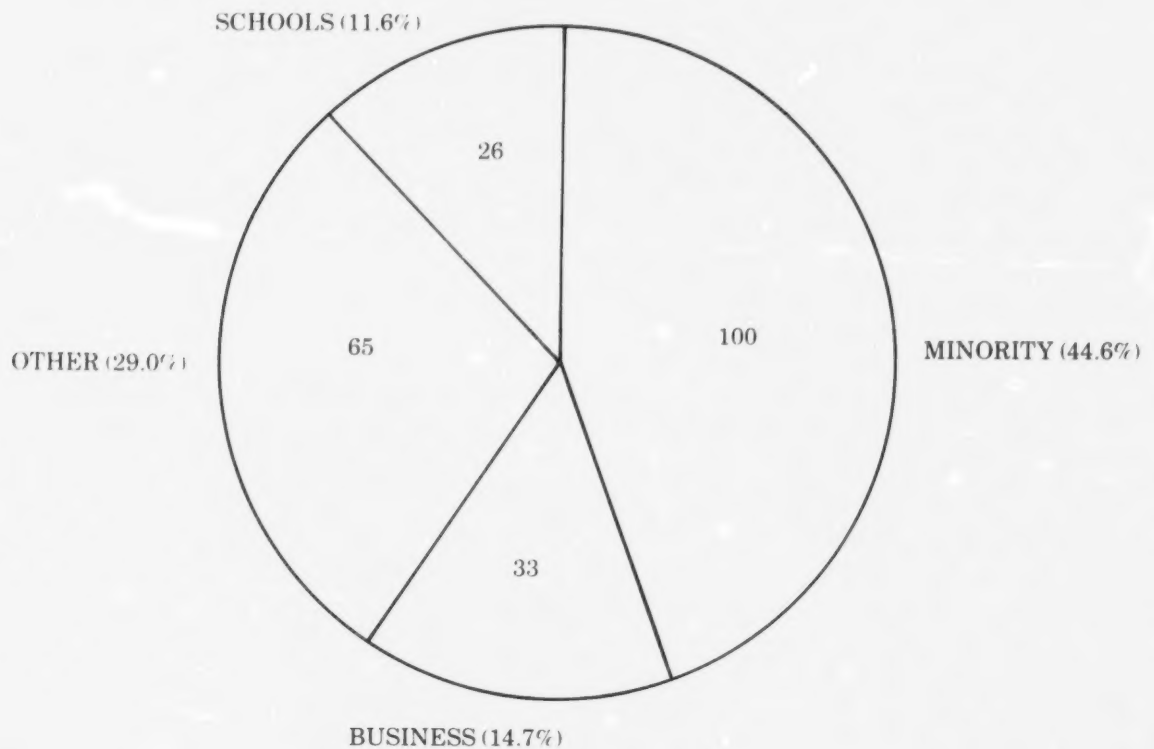
Figure 3.1

	1985	1986	1987
Speaking Engagements	125*	89	106
Consultations	7	5	13
Outreach Contacts	100	110	100
Information Booths	1	5	5
Total	233	209	224

*This includes 20 speaking engagements by volunteers under the Volunteer Program which was discontinued in 1985 due to insufficient resources.

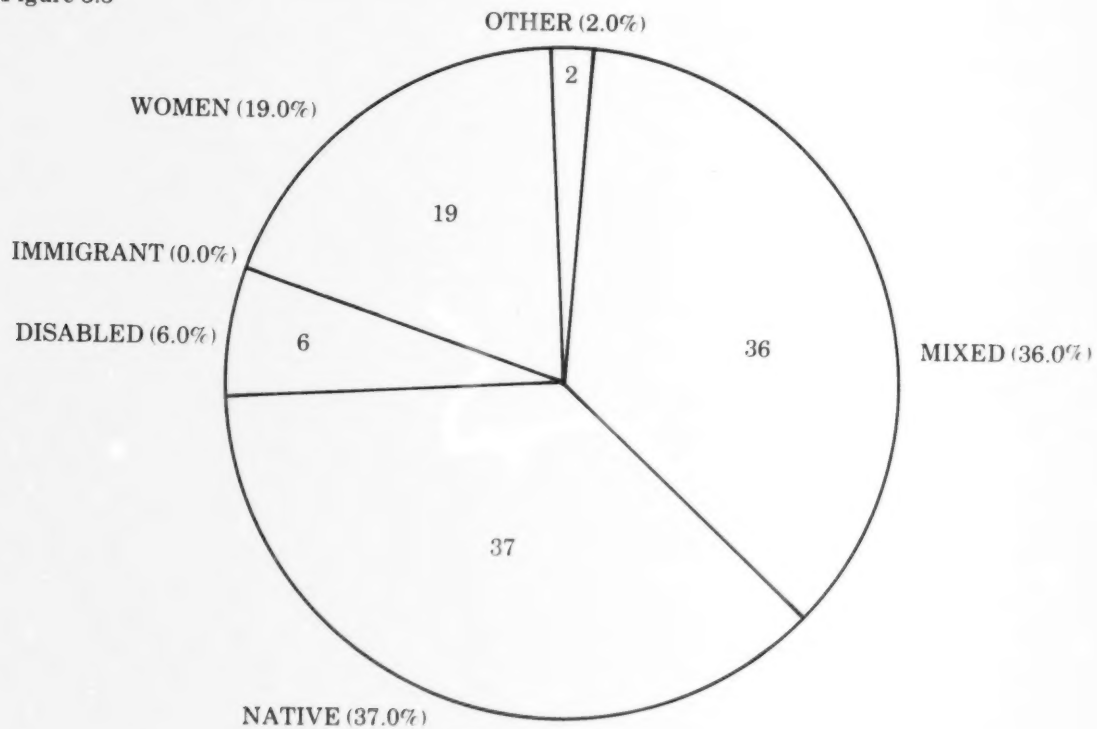
GENERAL AUDIENCE CHARACTERISTICS 1987

Figure 3.2



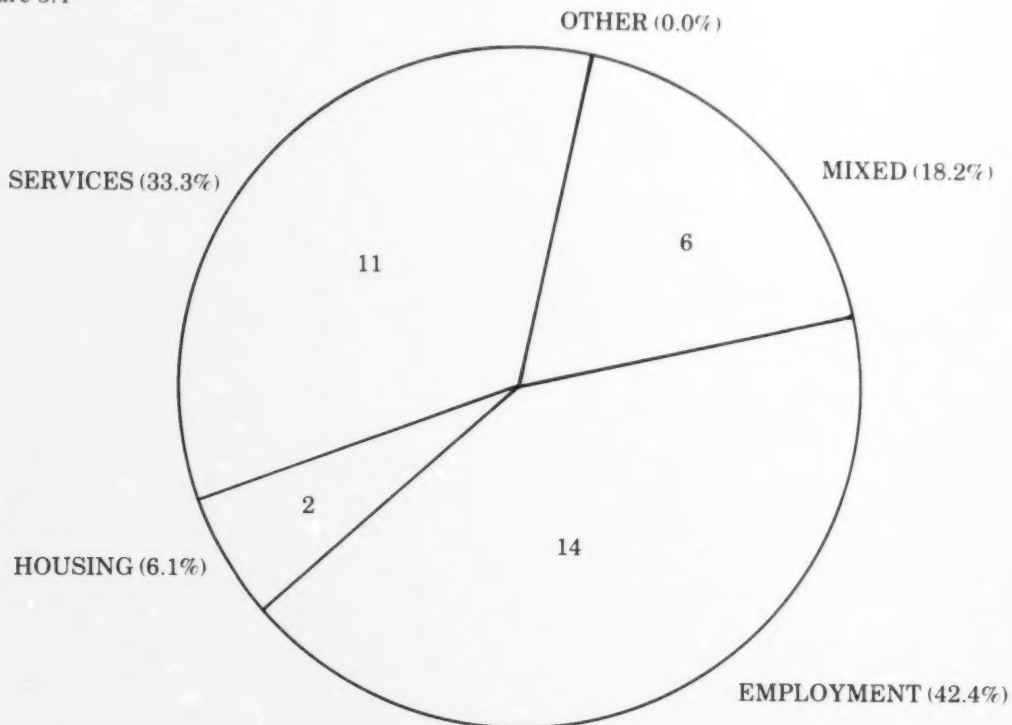
MINORITY GROUP AUDIENCES 1987

Figure 3.3



BUSINESS GROUP AUDIENCES 1987

Figure 3.4



4. SPECIAL PROGRAMS /AFFIRMATIVE ACTION STATISTICS

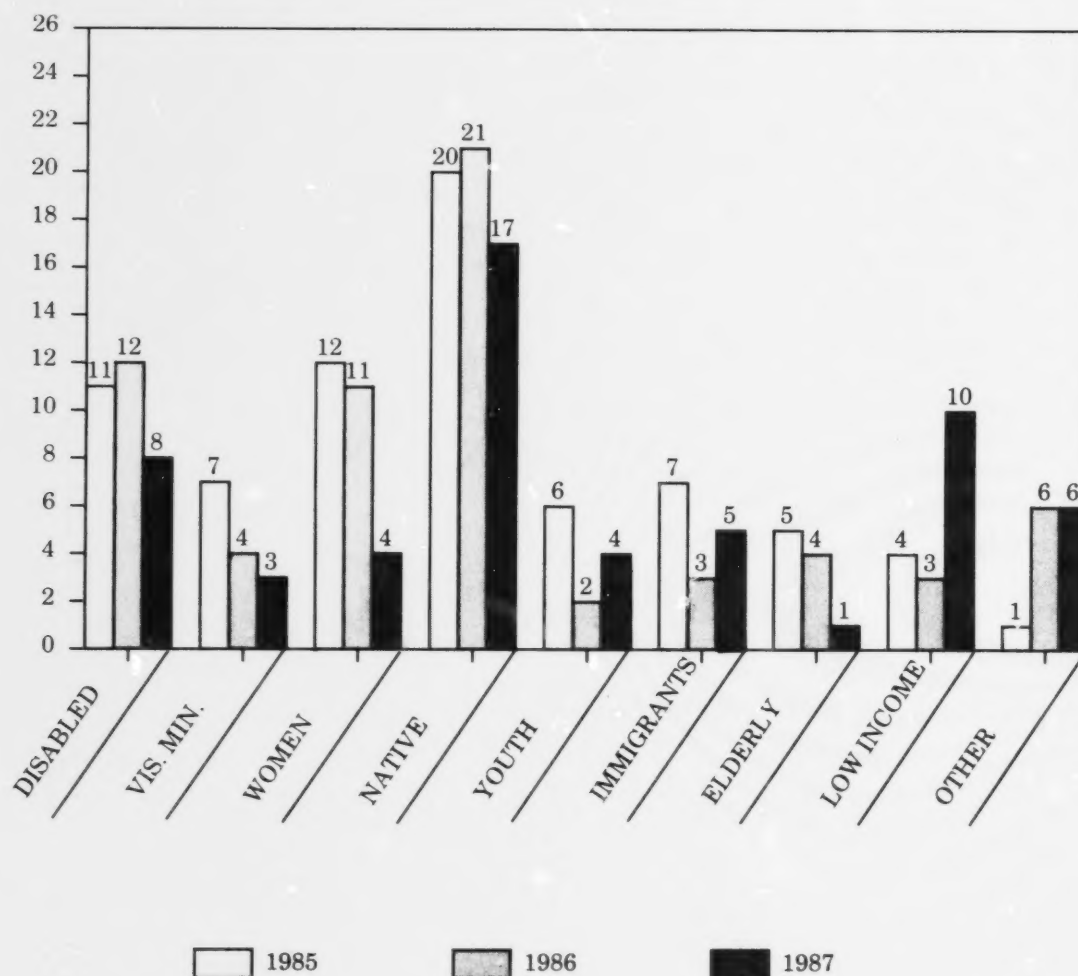
Figure 4.1

APPLICATIONS FOR SPECIAL PROGRAM APPROVAL 1983 - 1987

	1983	1984	1985	1986	1987
Applications Received	13	25	40	34	31
Approved	13	25	26	28	33
Rejected/Withdrawn	0	0	4	4	10
Decision Pending at Year End	0	0	10	12	0

SPECIAL PROGRAMS APPROVED BY TARGET GROUP 1985 - 1987

Figure 4.2



APPENDIX D

THE COMMISSIONERS

CLAUDIA WRIGHT — Chairperson

Claudia Wright, B.A., M.A., Ph.D., is a professor of Political Science at the University of Winnipeg. She is active in many organizations that are involved in human rights issues and also has academic interests that complement her commitment to civic education and participation.

MAREK DEBICKI — Vice Chairperson

Marek Debicki is a member of several civil rights organizations. He teaches civil rights at the University of Manitoba.

MARIANNE BOSSEN

Marianne Bossen, M.A. (Econ.) is a Consultant on Employment and Social Policy. She has pioneered research into equal opportunities for women in employment. In recent years, prompted by personal experience with disability, she has become involved in the concerns of physically handicapped persons. She serves on the Board of Management of the Canadian Paraplegic Association (Manitoba Division).

WAYNE COURCHENE

Wayne Courchene, born in Pine Falls, Manitoba, was schooled at the Fort Alexander Residential School on the reserve until he migrated to Winnipeg in 1962 where he graduated from high school and the University of Manitoba. Mr. Courchene is presently working for Training and Employment Agency of the Core Area Initiative.

BRIGITTE GRABA

Brigitte Graba has worked at Rossbrook House in the core area of Winnipeg since 1983. Her main concern is youth employment and she has been active in both the Summer Employment Action Committee and Fair Action for Community Employment. Ms. Graba is currently a member of the board of the North End Women's Centre and a volunteer of the Networking Committee of the German Canadian Congress.

FRANCESCO (FRANK) GRANDE

Frank Grande, an owner/manager of Delgran Real Estate, is Past-President of the Italian Canadian League of Manitoba. He is an active member of various community groups and has served as Vice-Chairperson of the Manitoba Advisory Council on Immigration and Ethnic Relations, member of the Board of the Italia Credit Union and representative for the Italian

community on the Manitoba Intercultural Council.

SOCORRO (CORY) JUAN

Cory Juan is a teacher at John M. King Elementary School. She is President of Filipino Teachers Inc. and serves on the Board of Directors of the Manitoba Multicultural Resource Centre. Ms. Juan is also an advisor of the Seven Oaks Filipino Parents Council, St. Peters Catholic Church Council and Secretary of Timpuyog T. Ilokano Ditooy Manitoba.

RAJ MEHTA

Raj Mehta, B.Sc., LL.B., is General Manager of Lansy Enterprises Ltd. He is dedicated to the cause of human rights and is active in various cultural and community groups. Mr. Mehta is Past-President of the Winnipeg Chapter of the National Association of Canadians of Origins in India and a member of the Multicultural Advisory Committee.

MARION ROBINSO

Marion Robinsong, born and raised in Brandon, Manitoba, is a Resource Teacher with the Brandon School Division. She holds Bachelors degrees in Arts and Education from Brandon University and also attended the University of Santa Barbara for a post-graduate year of Studies in Education. She is active in many organizations involved with human rights, personal counselling, improved parenting and home schooling as well as the Manitoba Association of Resource Teachers.

LORRAINE SIGURDSON

Lorraine Sigurdson is a Staff Representative with the Canadian Union of Public Employees (C.U.P.E.) for over ten years and was previously President of C.U.P.E. Local 1550 at the Health Sciences Centre and Secretary of the Manitoba Division of C.U.P.E. Ms. Sigurdson has also served on numerous C.U.P.E. committees including the Equal Rights and Opportunities Committee.

HELEN WARNER

(Joined the Commission November 1987)

Helen Warner is a resident of Dauphin, Manitoba. She has been actively involved in women's issues since 1974, was a founding member of the Parklands Status of Women and Parklands Crisis Centre, and is the Parklands representative of the Manitoba Action Committee on the Status of Women. Ms. Warner has also been involved with the education programs of the Alcoholism Foundation of Manitoba and the Manitoba Mental Health Association.

T. KUE YOUNG

(Joined the Commission in
November 1987)

Kue Young, M.D., M.Sc., FRCP(C), has lived in Canada since 1966 and is an Associate Professor in the Dept. of Community Health Sciences at the University of Manitoba. He has worked as a general practitioner in Saskatchewan, a C.U.S.O. volunteer in Tanzania and a public health administrator of Indian Health Services in Northwestern Ontario. Dr. Young's research interests are in the health impact of social change among rural peoples in Northern Canada and in developing countries.

APPENDIX E

The Manitoba Human Rights Commission Publications List

Sexual Harassment: Does It Affect Your Workplace?/Does It Affect You? (Brochure)*

— Contains information for both employers and employees on what constitutes sexual harassment and what can be done about it.

Guidelines for Taxicab Owner/Operators and Disabled Passengers (Brochure)*

— Sets out the rights and responsibilities of cab drivers serving taxi customers or potential customers with physical disabilities. Also contains tips to drivers for providing effective, quality service to disabled customers.

Inventory of Human Rights Teaching Materials (1984)

— Contains a bibliography of human rights teaching materials available in Manitoba. Materials are for use in the classroom or as source books for teachers (26 pages).

The Manitoba Human Rights Commission Annual Report

— Contains information on the Commission's structure and function, major activities of the past year, case examples, statistical highlights.

At year end, the following publications were being revised to reflect the provisions of the new Human Rights Code:

Guidelines: Housing

— Sets out the housing provisions of the Manitoba Human Rights Code. Of interest to tenants, owners, apartment managers and rental agencies.

Guidelines: Pre-Employment Inquiries

— Outlines the pre-employment provisions of the Code. Of interest to employers, personnel departments, employment agencies, and persons seeking employment.

A Guide for Respondents*

— Outlines the complaint process and the rights and responsibilities of employers, property owners, rental agents, business proprietors, etc. under the Manitoba Human Rights Code.

The following new publications were being developed at the time this report was prepared. The Commission hopes to have them available by the fall of 1988:

- Multilingual Brochure outlining the basic provisions of the Code. (Languages to be included: Vietnamese, Lao, Spanish, Punjabi, English, Polish, French, Tagalog, Portuguese, Amharic, Tigrina and Hindi.)
- a Guide to the Manitoba Human Rights Code
- Guidelines: Advisory Opinions
- Guidelines: Special Programs

*(currently available in English or French)

Audio-Visual Materials

"The Eye of the Storm", New York: American Broadcasting Companies Inc., 1970 (28 min.)

16 mm. film

Documentary about a 3rd grade teacher who uses eye-colour as a basis to teach students the realities of prejudice and discrimination.

A list of discussion questions has been developed to accompany this film.

"Buttonville", The Alberta Human Rights Commission, 1979. (25 min.)

16mm. film

Cartoon story about plant people who are all required to wear identifying buttons. When one of the plant people loses his button the whole town learns a lesson about labelling.

A Teacher's Guide is also available which includes various learning activities for Grades 1-3 and Grades 4-6.

"A Different Approach", The South Bay Mayor's Committee for Employment of the Handicapped, 1978 (20 min.)

16mm. film

Designed to dispel myths and prejudices about employment of the handicapped, the film contains a series of comedy vignettes presenting handicapped individuals performing various job functions.

"The Workplace Hustle", Clark Communications, 1980. (30 min.)

16mm. film

A group of women and a group of men discuss sexual harassment in the workplace. Lin Farley, author of *Sexual Shakedown*, talks about sexual harassment, why it happens and the effect it has on its victims.

A list of discussion questions has been developed to accompany this film.

"See What I Say", Michigan Women Filmmakers, 1981. (25 min.)

16mm. film

The deaf discuss how American Sign Language enables them to communicate. A concert for the deaf by Holly Near illustrates the expressiveness and beauty of the language.

"Human Rights for the Deaf", 1982 (29 min.)

Video-tape 3/4 in. format.

— A presentation about human rights made to the Kiwanis Centre for the Deaf, which was video-taped by Channel 13. It includes simultaneous translation in American Sign Language (ASL).

"The Charter and You"

Video-tape 3/4 in. format.

— This 60 minute video-tape, prepared by Confederation College of Applied Arts and Technology for the Department of the Secretary of State, Canada, is accompanied by a Reference Guide and Teacher's Guide. It is intended to be an introduction to *The Charter's* provisions and how they impact upon individual Canadians in their every-day affairs.

"No One Can Take Them Away", 1987 (14 min.)

Videotape VHS and Beta formats available

— This video was produced for schools by the Canadian Red Cross Society. It introduces the topic of human rights and includes information on the history of human rights, the Universal Declaration of Human Rights and landmark events in Canadian human rights history. The film also offers practical suggestions for action on human rights in Canada and the world.

"Human Rights, Human Wrongs", 1987 (30 min.)

Video-tape VHS format

— This video, directed at young people between nine and thirteen and their parents, features Rick Hansen who tells how his human rights are affected by his disability. Native Canadians, girls, women and members of ethnic minorities relate their own experiences with discrimination. The causes and consequences of intolerance are examined through personal interviews, dramatizations and audience participation. The video offers solid strategies for fighting discrimination and creating, instead, a proud record of human rights.

"A Class Divided", Yale University Films for Frontline, 1985 (58 min.)

Video-tape VHS format

— This film is a follow-up to "The Eye of the Storm". The teacher who first split her class in two according to eye colour, re-unites with several of her former students at the school reunion. The discussion between the teacher and her grown students about the long lasting effects of that exercise makes for very interesting viewing.

"What You Should Know About the Human Rights Act" (30 min.)

Video-tape VHS and Beta formats available.

— Although this video-tape refers to The Human Rights Act, the basic content is still relevant under the new Human Rights Code. The tape is divided into three segments, each containing the same information — an explanation about the Commission, the protection offered under the legislation and information pertaining to complaints. Segment 1 is in the Cree language. Segment 2 is in the Island Lake dialect and Segment 3 is in Saulteaux (Ojibway) language.

APPENDIX F

MHRC USE ONLY/
RÉSERVÉ À LA CDPM
Rec'd by:/Reçu par:

Date: _____

Complaint of Discrimination Under The Human Rights Code (Manitoba)

Discrimination — Plainte portée en vertu du code des droits de la personne (Manitoba)

File Number /
N° de dossier :

Page ____ of ____/
____ page de ____

Name and Address of the Complainant/
Nom et adresse du plaignant

Name and Address of the Respondent/
Nom et adresse de l'intimé

Name and Address of any person or class of persons discriminated
against in addition to or other than the Complainant(s)/
Nom et adresse de toute personne ou tout groupe de personnes au nom
de qui ou avec qui le plaignant a porté plainte

The Complainant alleges that in the Province of Manitoba/
Le plaignant allègue que, dans la province du Manitoba

On or about the/ _____ day of/
le, ou vers le _____ jour de _____, 19____.

OR/OU

on a continuing basis
up to and including the/
de façon permanente _____ day of/
jusqu'au _____ jour de _____, 19____.

that the Respondent(s) did contravene section(s)/
l'(les) intimé(s) a(ont) violé les dispositions de l'(des) article(s) _____
of **The Human Rights Code**, or any other applicable section as follows /
du Code des droits de la personne, ou tout autre(s) article(s) qui s'y
rapporte(nt), de la façon suivante:

SAMPLE

I certify that the foregoing information is correct to the best of my knowledge and I believe that the events described above constitute a contravention of **The Human Rights Code**./

Je certifie par la présente que les renseignements susmentionnés sont, en autant que je sache, exacts et complets et que les faits cités constituent une violation **du Code des droits de la personne**.

City/Town Complaint Signed At/
Nom de la ville ou de la municipalité
où la plainte a été portée

Date
Day/ _____ Month/ _____ Year/
jour _____ mois _____ année _____

Signature of Complainant/
Signature du plaignant